PROVINCIAL JUSTICE,

OR

Magistrate's Manual,

BEING A COMPLETE DIGEST

OF THE

CRIMINAL LAW,

AND

A COMPENDIOUS AND GENERAL VIEW OF THE

PROVINCIAL LAW;

WITH PRACTICAL FORMS,

FOR THE USE OF THE MAGISTRACY OF

UPPER CANADA.

COMPILED, AND INSCRIBED BY PERMISSION, TO

HIS MAJESTY'S ATTORNEY GENERAL,

By W. C. Keele,

AN ATTORNEY OF THE SUPREME COURTS OF LAW AT WESTMINSTER.

TORONTO:
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INTRODUCTION.



The Criminal Law of England, as it stood on the 17th day of September, 1792, was adopted in this Province by the Provincial Statute 40 Geo. 3. c. 1. Since that period, many important changes have occurred in both countries, so as to render most of the English authors upon this branch of law, and particularly those of recent date, more or less embarassing to the reader. This difficulty and inconvenience the author of the present manual has endeavoured to rectify, by a careful revision of the whole criminal code, and a combination of the laws of the Province with that part of the British law which still remains in force,—thus presenting at once a full, clear, and comprehensive view of the criminal law of Upper Canada as it now stands, divested of all irrelevant matter.

The work has been compiled from the best standard authorities, references to which are given in every page. It includes also the acts of the last session of the Legislature,—rendering it a complete analysis of our laws up to the latest period.

In the last session several important alterations of the law were effected. The author would particularly direct the attention of the Magistracy to the new "Township Meeting" act, which repeals almost the whole of the previous laws on this head, and introduces another system for the regulation of township affairs, by the substitution of "Boards of Commissioners" in the several townships in lieu of the Magistracy, to superintend the repairs of the roads. As this act does not come in force till the first of December next, the former laws will of course remain in operation during the interval.

The Legislature also in the last session passed an act to mitigate imprisonment for debt, the provisions of which are noticed in the addenda. As the act directs that no person, after the first of June, instant, shall be arrested for any debt under £10, it will of course limit the power of Justices in issuing detaining warrants under the 10 G. 4. c. 2. (revived and continued by the 4 W. 4. c. 6.) to the like amount. The intention of the act is humane, and will probably result in another good, viz. the prevention of wilful and corrupt perjury, by restraining the too common practice of issuing writs of capias for trifling amounts and without adequate cause.

The powers and duties of the Magistracy are so fully detailed in the body of the work, that the author will not here enlarge upon the subject. He will merely observe, that in the upright and conscientious discharge of their duty, Justices of the Peace are powerfully protected by the law. They are secured against frivolous and vexatious actions for mere errors in form, by the 2 W. 4. c. 4.; and to obviate the difficulty which has sometimes occurred in drawing up convictions, the same statute prescribes a general form to be used in all cases where no other particular form has been given by statute.

The author has also included in the work the law respecting the "office and duties of Coroner," with various forms and precedents calculated to assist these officers in the performance of their duties: Also, a short treatise upon the law respecting landed property, or "real estate," with a few general forms of conveyancing, which may be found useful in those distant parts of the Province where recourse cannot always be had to professional aid.

Indexes to the principal matters will also be found at the end of the work.

At a future period the author intends to publish an edition of all the British Statutes extending to this Province anterior to the constitution; which, with the Provincial Statutes and the Manual now published, will complete the plan he has designed for simplifying and elucidating the criminal code of this Province.

With respect to the form and style of the Manual, the author trusts it will give general satisfaction. It has been printed upon Canadian paper and by a Canadian press, and will, he hopes, be regarded on these grounds as a performance not discreditable to the Province.

24th JUNE, 1835.

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A TABLE

OF THE GENERAL QUARTER SESSIONS.

HOME DISTRICT.—At *Toronto*, on Tuesday in the week next after the several Terms.

EASTERN DISTRICT.—At *Cornwall*, on the 4th Tuesday in January and April, and 2nd Tuesday in July and October.

OTTAWA DISTRICT.—At *Longuiel*, on the 3rd Tuesday in January and April, June and September.

BATHURST DISTRICT.—At *Perth*, on the 3rd Tuesday in March, September and December, and the 2nd Tuesday in June.

JOHNSTOWN DISTRICT.—At *Brockville*, on the 3rd Tuesday in February and May, and 2nd Tuesday in August and November.

MIDLAND DISTRICT.—At *Adolphustown*, on the 4th Tuesday in January, and 2nd Tuesday in July; at *Kingston*, on the 4th Tuesday in April, and 2nd Tuesday in October.

NEWCASTLE DISTRICT.—At *Amherst*, on the 2nd Tuesday in January, April, July and October.

PRINCE EDWARD DISTRICT.—At *Picton*, on the 1st Tuesday in January, April, July and October.

GORE DISTRICT.—At *Hamilton*, on the 2nd Tuesday in January, April, July and October.

NIAGARA DISTRICT.—At *Niagara*, on the 2nd Tuesday in January, April, July and October.

LONDON DISTRICT.—At *London*, on the 2nd Tuesday in January, April, July and October.

WESTERN DISTRICT.—At *Sandwich*, on the 2nd Tuesday in January, April, July and October.

THE

MAGISTRATE'S MANUAL.

ACCESSORY.

AN ACCESSORY is one guilty of Felony, not as a principal but by participation, command, advice or concealment. In high treason there can be no accessories, as all concerned are considered principals: so in petit larceny, misdemeanor, or inferior crimes of the like nature, under the degree of felony, there can be no accessories. The mere concealment of a felony *intended* to be committed, does not render the concealer an accessory. It is only misprision of felony. 2 *Haw.* c. 29. § 23.

There are accessories *before* and *after* the fact.

An *Accessory before the fact* is, as Hale defines it, one who being absent at the time the crime is committed doth procure, counsel, or advise the commission of it; and his absence is necessary to constitute him an accessory.

Accessories after the fact, are those who knowing the felony to have been committed by another, receive, relieve, comfort or assist, the felon. 1 *Hale.* 618.

But if others accompany the principal to commit a felony, and keep within hearing, or upon watch, all are in such case, deemed principals. 2 *Haw.* c. 29. § 7. 8.

A wife cannot be accessory to her husband, either before or after the fact, unless she be any way guilty of procuring him to commit the felony. 2 *Haw.* 320.

Anciently, the accessory could not be tried unless the principal were attainted; 3 *Ed.* 1. c. 14; but by the 1 *Ann.* c. 9. § 1. If the principal be convicted, or stand mute, or challenge above twenty of the Jury, the accessory may be tried as if the principal had been attainted.

By the 29 G. 2. c. 30. The buyer or receiver of stolen lead, iron, copper, brass, bell metal or solder, may be convicted altho' the principal had not been, and shall be transported for fourteen years.

And now by 3 W. 4 c. § 12. Accessories before the fact, to any capital offence, shall suffer death.

In all other cases of stolen goods, if the principal cannot be taken, the buyer or receiver may nevertheless be prosecuted for a misdemeanor, at common Law, and be punished by fine and imprisonment. 1 *Ann.* c. 9. § 2. 5 *Ann.* c. 31. § 6.

Bail may be taken for the misdemeanor.

Information of the party, to ground a Warrant for apprehending an Accessory before the fact.

A. B. of the Township of —— in the Home District, maketh oath and saith, that on —— the —— day of —— last, his dwelling-house, situate —— was about the hour of nine in the night of the same day, feloniously and burglariously broken and entered by some person or persons, and that *(describe the property stolen)* his property were then and there feloniously stolen, taken and carried away, and that he hath just cause to suspect, and doth suspect that C. D. late of—— aforesaid, labourer, did commit the said felony and burglary, and that E. F. late of—— aforesaid, labourer, did advise, aid and abet, the said C. D. in the said felony.

Sworn, &c. A. B.

Warrant thereon.

To the Constable of —— and all other His Majesty's Peace Officers within the said District.

Home District, } Whereas A. B. of —— gentleman, hath this day
to wit. } made oath, before me W. S. Esq., one of His Majesty's Justices of the Peace in and for the said District, that *(here state the facts as set forth in the information)*. These are therefore in His Majesty's name to charge and command you, forthwith to apprehend and bring before me, the said C. D. and E. F. to answer the said complaint, and to be further dealt with according to Law. Given under my hand and seal this ——day of —— 18 —

Commitment.

To the Keeper of the Common Gaol of —— or his deputy.

Receive into your custody the bodies of C. D. and E. F. herewith sent you, brought before me W. S. Esq. one of His Majesty's Justices of the Peace in and for the said District, by R. S. Constable of —— charged upon the oath of A. B. with *(here state the offence)*; and them safely keep in your custody until they shall be discharged by due course of Law. Given under my hand and seal at —— this —— day of —— 18 —.

Warrant to apprehend an Accessory after the fact, for harbouring the Principal.

To the Constable of —— and all other His Majesty's Peace Officers within the said District.

Home District, } Whereas C. D. of —— stands charged before
to wit. } me J. C. Esq. one of His Majesty's Justices of the Peace in and for the said District, on the oath of A. B. with having *(state the offence)*; and whereas P. Q. hath this day also made oath, before me, that T. T. of —— aforesaid, yeoman, since the said felony and burglary was committed, hath received, harboured and maintained, him the said C. D. in the dwelling-house of him the said T. T. at —— aforesaid, he the said T. T. well knowing the said C. D. to have committed the said felony and burglary. These are therefore to command you, forthwith to apprehend and bring before me, at this place, the body of the said T. T. to answer to the said charge, and to be further dealt with according to Law. Given under my hand and seal at —— in the said District, this —— day of —— 18 —.

Warrant to apprehend an Accessory after the fact, for receiving stolen goods.

To the Constable of —— and all other His Majesty's Peace Officers within the said District.

Home District, } Whereas A. B. hath this day made oath, before
to wit. } me S. P. Esq., one of His Majesty's Justices of the Peace in and for the said District, *(here state the facts set forth in the Information)*; and also, that the said A. B. hath cause to suspect, and doth suspect, that I. I. of —— labourer, hath feloniously bought and received the said *(the property stolen)* knowing the same to have been feloniously stolen. These are therefore to command you, forthwith to apprehend and bring before me, at this place, the body of the said T. T., to answer to the said charge, and to be further dealt with according to Law.

Given under my hand and seal at —— in the said District, this —— day of —— 18 —.

Commitment of an Accessory for a misdemeanor in receiving stolen goods, previous to the trial and conviction of the Principal.

To the Keeper of His Majesty's Gaol at ——.

Home District, } Receive into your custody, and there safely keep
to wit. } until delivered by due course of Law, the body of A. B. herewith sent you, and charged before me, one of

His Majesty's Justices of the Peace acting in and for the said District, on the oath of C. D. of —— with having unlawfully received *(describe the stolen articles)*, lately stolen from the dwelling-house of the said C. D. at —— aforesaid, by some person or persons at present unknown, the said A. B. well knowing the said *(describe the articles)* to have been feloniously stolen. Given under my hand and seal at —— this —— day of —— 18—.

ACQUITTAL.

And see—AUTREFOIS ACQUIT.

AN ACQUITTAL is the deliverance and setting free of the accused from the imputation of guilt; as when a prisoner is found by a Jury not guilty of the offence with which he stood charged before them upon his trial. *Deacon's C. Law.* 18.

Where there is no evidence whatever to affect a party who is unjustly made a defendant with others, in a prosecution, the judge may, in his discretion, direct the jury to acquit him in the first instance, and such an acquittal will enable him to give evidence in behalf of the other defendants. 1 *Holt.* 275. *Gil. Ev.* 117. *Bull. N. P.* 285.

Every prisoner upon his acquittal, it has been said, has an undoubted right to a copy of the record of such acquittal; and after a demand of it has been made of the proper officer, the latter may be punished for refusing to make it out. *R. v. Brangan* 1. *Leach.* 27.

But if there was probable cause for the indictment, or where the acquittal arises from the incompetency of a witness, the court will not then permit the prisoner to have a copy of the indictment. *R. v. Quick.* 1. *Leach* 28. *Note (a). R. v. Bevan. Ibid.* 1. *Ld. Ray.* 253.

ACTION.

No action can be brought against a Justice of the Peace for any thing done by him by virtue of his office, until notice in writing of the intended writ or process shall have been delivered to him, or left at his usual place of abode, at least *one calendar month* before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action which the party suing claims to have against such Justice; and on the back of such notice shall be endorsed the name and place of abode of the plaintiff's attorney or agent. 24 *Geo.* 2. c. 44. § 1.

The party may give the notice in his own name, or in the name of his attorney; but the particular writ intended to be issued must he stated, and it must be served one full calendar month previous to such writ being issued, and the month begins with the day on which the notice is served. 3 *T. R.* 623.

It is necessary to be particular in describing the offence, as no evidence can be given by the plaintiff of any cause of action except such as is contained in the notice; a general notice of an action for an assault and false imprisonment is bad. 7 *T. R.* 631.

The action must be commenced within *six calendar months* after the act committed, and must be brought in the district where the grievance complained of arose.

No action shall be brought against any constable, or any officer acting by his order, for any thing done in obedience to any warrant of a Justice, until demand made, or left at his usual place of abode, by the party intending to bring such action, or by his attorney or agent, in writing, signed by the party demanding the same, of a perusal or a copy of the warrant, and that the same hath been refused or neglected for six days after such demand: and if after any demand and compliance, any action shall be brought, without making the Justice who signed the warrant defendant, on producing and proving such warrant on the trial, the jury shall give a verdict for the defendant, notwithstanding any defect of jurisdiction of the Justice; and if such action be brought jointly against the Justice and Constable, &c. on proof of such warrant, the jury shall find for the Constable; and if the verdict shall be given against the Justice, the plaintiff shall recover costs against him, including such costs as the plaintiff is likely to pay to the defendant for whom the verdict shall be found. And where the plaintiff in such action against a Justice shall obtain a verdict, and the Judge shall certify on the record that the injury was wilful and malicious, the plaintiff shall have double costs. 24 *G.* 2. c. 44. § 1. 6. 7. It is not necessary in the notice that the attorney's christian name should be written in full, but his residence must be specifically stated. 7 *Taunt.* 53. 2 *Marsh.* 367. 3 *Bos.* and *Pull.*

Notice of Action from the Attorney of the Party to a Justice of the Peace, for false Imprisonment.

To A. B. one of His Majesty's Justices of the Peace, acting in and for the——District.

SIR,

I do hereby, as the attorney of C. D. of——gent. give you notice, according to the form of the statute in that case made and provided, that I shall, at or soon after the end of one calendar

month from the time of the service of this notice upon you, cause a writ of *capias ad respondendum* to be sued out of his Majesty's Court of King's Bench at Toronto against you, at the suit of the said C. D. for false imprisonment; for that you, on or about the —— day of —— last, by warrant under your hand and seal, dated the —— day of ——, did cause the said C. D. to be apprehended and conveyed to the common gaol of —— (as the case may be) and to be there imprisoned, and kept and detained there without any reasonable or probable cause for a long time, to wit, for the space of —— then next following. Dated this —— day of —— 18

Yours, &c.

E. F. Attorney for the said C. D.

City of Toronto.

Demand on a Constable of perusal and copy of his warrant

To Mr. C. D.

I do hereby, as attorney of and for A. B. of ——— &c. according to the form of the statute in such case made and provided, demand of you the perusal and copy of the warrant, by virtue or under colour whereof, you did, on or about the ——— day of ——— last, apprehend the said A. B. and carry and convey him in custody to and before S. P. Esq. one of his Majesty's justices of the peace in and for the ——— district. Dated, &c.

Yours, &c.

W. T. attorney for the said A. B.

Hamilton, District of Gore.

The like on a Gaoler.

To Mr. A. B.

I do hereby, as the attorney for E. F. of ——— &c. according to the form of the statute, &c. (*as before*) demand of you the perusal and copy of the warrant of commitment and detainer under which you received into your custody the said E. F. on or about the ——— day of ——— instant. Dated, &c.

Yours, &c.

W. T. attorney for the said E. F.

Hamilton, District of Gore.

It seems proper that constables should retain their warrants, and not return them to the magistrate, otherwise they cannot comply with the directions of the act. (*Toone.*)

ACTS OF PARLIAMENT.

By the 14 G. 3. c. 11. it is enacted, that the Secretary of this Province shall endorse on every Act of the Legislature which should pass during the then present and every future session thereof, immediately after the title of such Act, the day, month and year, when the same shall have passed, and received the royal assent: and such endorsement shall be taken to be a part of such Act, and to be the date of its commencement, when no other commencement shall be therein provided.

By the 44 G. 3. c. 5. § 3. it is enacted, that the said clerk shall, as soon as possible after receiving the said acts, send four copies to each member of the Legislative and Executive Councils: four copies to each of the Judges of the King's Bench, and the like number to the Attorney General, and twenty copies to each member of the present House of Assembly, to be by them distributed in such manner as will best tend to promulgate a general knowledge of the laws.

By the 4 G. 4. c. 14. § 2. the expense of printing the Statutes annually, shall be provided for in the contingent accounts.

By the 1 W. 4. c. 2. § 2. all acts of the Provincial Parliament, public or private, shall be taken notice of judicially in all Courts of Law in this Province, without being specially pleaded; and a copy of such act printed by proper authority, shall be taken as sufficient evidence.

ADJOURNMENT.

When a court of sessions of *oyer and terminer*, and gaol delivery breaks up without any *adjournment*, or upon a void one, as being made without the consent of the majority of the commissioners, the commission is determined, if no time be limited for its continuance, as where it is appointed *pro hac vice* only; but if it be granted for a certain time, or *quamdiu nobis placuerit*, it does not necessarily require any adjournment, and may be holden again on a new summons. 2 *Haw.* c. 5. § 7.

AFFIDAVIT.

An affidavit is an oath of some fact, testified in writing and sworn before some person who hath authority to administer such oath. The true place of habitation and true addition of the deponent must be inserted in the affidavit. 1 *Lill. Ab.* 41. 46.

An affidavit ought to set forth the matter of the *fact* only, which the party intends to prove by his affidavit, and not to declare the

merits of the case, of which the court alone is to judge. 21 *C.* 1. *B. R.*

And the matter sworn to must be *positively* set forth, with all material circumstances attending it, that the court may judge whether the deponents conclusion be just or not. 1 *New. Abr.* 66.

Therefore on a motion to put off a trial, for want of a material witness, it must appear in the affidavit that sufficient endeavours have been made to have him at the time appointed, and that he cannot possibly be present, though he may be, on further time given. 7 *Mod.* 121. *Comb.* 421. 422.

When an affidavit is read in court, it ought to be filed with the proper officer, that the adverse party may see it and take a copy. *Pasch.* 1655.

The affidavit must be made before a judge or commissioner of the court where the cause or matter is pending. *Sty.* 455.

An Affidavit improperly entitled cannot be read, as no indictment thereon will lie for perjury. *Salk.* 461.

Affidavits in aggravation of punishment are not receivable in cases of felony. *R. v. Ellis.* 6. *B. & C.* 148.

Any person making, or knowingly using a false affidavit, purporting to be taken abroad before a *foreign magistrate*, for the purpose of misleading our own courts, is guilty of a *misdemeanor*, in attempting to pervert public justice, and is punishable by indictment. *Omealy v. Newell.* 8 *East.* 364.

Affidavit of being prevented by illness from attending the Sessions, [to be made by a medical man, if convenient,] *in order to move to continue a party upon his recognizance. (Toone.)*

Home District, } A. B. of —— in the said District, Surgeon,
to wit. } maketh oath, and saith, that C. D. of —— yeoman, is confined to his house by severe illness, and that this deponent saw the said C. D. yesterday, and verily believes he is incapable of travelling without manifest danger of his life.

Sworn, &c.

A. B.

AFFRAY.

An affray signifies the fighting of two or more persons in some public place, to the *terror of His Majesty's subjects.* 3 *Inst.* 158. 4 *Bl. Com.* 144. 1 *Burn. Just. Affray.* 1.

An affray differs from a riot, in this: that two persons only may be guilty of it; whereas *three* persons, at least, are necessary to constitute a riot. 1 *Haw.* c. 65. § 1.

Persons going armed with such dangerous and unusual weapons as will naturally cause terror to the people, are guilty of an affray; which is said to have been always an offence at common law, and is strictly prohibited by several statutes. 1 *Haw.* c. 63. § 2. 4.

A *constable* is not only empowered, but bound, to suppress an affray which *happens in his presence;* and he may demand the assistance of others to enable him to do so, which if they refuse, they are punishable by fine and imprisonment. *Ibid.* 3. 13.

A justice of the peace may, by his warrant, authorise the arrest of any person for an affray, and may compel the offender to find sureties of the peace. But he cannot do this without a warrant when the affray is out of his view. 1 *Haw.* c. 63. § 18.

This offence is in general punishable by *fine and imprisonment* the measure of which is to be regulated by the discretion of the judges, according to the circumstances of the case. 1 *Haw.* c. 63. § 30.

Affidavit to ground a Warrant to apprehend Affrayers.

A. B. of ——, hatter, maketh oath and saith, that on the —— day of —— in the year of our Lord 18—, C. D. of —— labourer, E. F. of —— labourer, and G. H. of —— yeoman, did in a tumultuous manner, and with force and arms, make an affray, to the terror of His Majesty's subjects then and there being, wherein the said A. B. was assaulted, beaten and abused, by the said C. D. E. F. and G. H. without any just or reasonable cause.

Sworn, &c. A. B.

Warrant to apprehend Affrayers.

To the Constable of ——.

Home District, } Whereas complaint hath been made before me,
to wit. } S. P. Esq. one of His Majesty's justices of the peace in and for the said district, upon the oath of A. B. of —— in the said District, that *(here state the substance of the complaint, as set forth in the Affidavit.)* These are therefore, in His Majesty's name, to charge and command you, forthwith, to apprehend the said C. D. E. F. and G. H. and bring them before me, or some other of His Majesty's justices of the peace for the said district, to answer the premises, and to find sureties, as well to keep the peace towards the said A. B. as to appear at the next general quarter sessions of the peace, to be held at —— in and for the said district, to answer such indictments as shall be preferred against them by the said A. B. for the said offence.

Given under my hand and seal, this —— day of —— 18—

Indictment for an Affray. (Archbold.)

Home District, } The jurors for our Lord the King upon their
To wit: } oath present, that J. S. late of the township of ——— in the county of ——— in the Home district, labourer, and J. W. of the same, carpenter, on the ——— day of ——— in the ———year of the reign of our Sovereign Lord William the fourth, with force and arms, in the township aforesaid, in the county and district aforesaid, being unlawfully assembled together and arrayed in a warlike manner, then and there in a certain public street and highway there situate, unlawfully and to the great terror and disturbance of divers liege subjects of our said Lord the King then and there being, did make an affray, in contempt of our said Lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our Lord the King his crown and dignity.

AGRICULTURAL SOCIETIES.

By the 11 G. 4. c. 10. reciting that it would greatly tend to the general improvement and prosperity of this Province, if agricultural societies were established in every district, with a suitable endowment from the public funds, it is enacted, that when any agricultural society for the purpose of importing valuable live stock, grain, grass seeds, useful implements, or whatever else might conduce to the improvement of agriculture in this Province, shall be established in any district, and shall make it appear to the satisfaction of the Governor, &c. that not less than £50. has been subscribed by the society, and paid into the hands of a treasurer, and the president and directors of the said society, shall petition the Governor for aid in support of said society, it shall be lawful for the Governor to issue his warrant to the Receiver General in favor of such petitioners, for the sum of £100, annually, during the continuance of such society, and so long as the society shall themselves continue to raise a sum, by subscription, of not less than £50; and in case an agricultural society shall be established in each county of any particular district, the said bounty shall be equally divided between the societies.

This act to remain in continuance four years, and till the end of the next session of parliament.

The act passed on the 6th March, 1830, and will consequently expire with the session, ending in 1835.

ALE-HOUSES.

By the 4 G. 4. c. 15. § 1. every person who shall open a house for the sale of beer, ale, cider or other liquors, not spirituous, within any town or village of this province, or within one mile thereof, containing twenty houses or more, by retail, shall take out a license, under the hand and seal of any two justices of the peace residing within such town or village; or if two justices shall not be residing within such town or village, then by any two justices nearest thereto, and which license shall be in the form following:

Form of License.

"We, A. B. and C. D. two of His Majesty's justices of the peace residing in [or nearest to, as the case may be] the town or village of —— do hereby authorise and empower E. F. in the house described by the sign of —— in said town or village, in the —— district, to keep a common ale and victualling house, and to utter and sell therein by retail, ale, beer, cider and other liquors, not spirituous, also, bread and other provisions; provided, that no unlawful game or games, or any drunkenness or other disorder be suffered in said house, or in the yard, garden, or premises thereunto belonging, but that good order and rule be maintained therein. This license to continue from the date hereof until the —— day of —— in the year of our Lord ——

For which license two shillings and six pence may be demanded, and no more.

Sec. 2. The justices before granting such licenses, shall take bond and surety by recognizance, from such alehouse-keeper in £10. and two sureties in £5. or one sufficient surety in £10. as well against the using of unlawful games, as also for the maintenance of good order and rule; to be filed by the justices with the clerk of the peace, at or before the next general quarter sessions, and such recognizance to be in the form following; and fee for the same, one shilling.

Form of Recognizance.

—— District, } Be it remembered, that on the —— day of ——
to wit. } in the —— year of the reign of our Sovereign Lord —— A. A. of —— in the said district, yeoman, and B. B. of —— yeoman, and C. C. of —— yeoman, personally came before us D. D. and E. E. justices of the peace for the said district, and acknowledged themselves to owe to our Sovereign Lord the King, that is to say, the said A. A. the sum of ten pounds,

and the said B. B. and C. C. in the sum of five pounds each, of good and lawful money of Upper Canada, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our Sovereign Lord the King, his heirs and successors, if the said A. A. shall make default in the condition hereunder written. Whereas the above bounden A. A. is licensed to keep a house for the sale of ale, beer, cider and other liquors, not spirituous, by retail, for one year from the date hereof, in the house wherein he now dwelleth, known by the sign of—— in—— Now the condition of this recognizance is such, that if the said A. A. shall suffer no unlawful games, drunkenness, or any other disorder, to be used or committed in his said house, nor in any outhouse, yard, garden, or other the appurtenances thereto belonging, but shall maintain and keep good order and rule within the same, then this recognizance to be void, otherwise to remain in full force and virtue.

Sec. 3. Every person to whom such license shall be granted, shall pay a duty for the same, as follows, viz. :—in or within one mile of towns or villages containing not less than twenty, nor more than fifty dwelling-houses, 10s.; from fifty to one hundred, the sum of 20s.; and more than one hundred, the sum of 40s.; which monies shall be paid to the magistrates issuing the license, and by them, within six months afterwards, to the receiver general, for the use of the province.

Sec. 5. Any person opening an alehouse, &c. contrary to this act, shall upon conviction before any two justices, upon the oath of one or more witnesses, or upon confession, forfeit and pay not less than £2. nor more than £5. to be levied by distress and sale of the goods of the offender, by warrant from the magistrates before whom such conviction shall happen, with costs; and for want of sufficient distress be committed, by order of such magistrates, to the common gaol of the district, for not less than ten days, nor more than thirty days.

Sec. 5. One half of the penalties shall be paid to the receiver general, for the use of the province, and the other moiety to the informer.

Sec. 6. Any justice on complaint or information, that any person licensed as aforesaid, whereby in the judgment of such magistrate the recognizance shall be forfeited, may summon such person to appear at the next general quarter sessions, to answer to such complaint, and shall bind the complainant in recognizance to appear and give evidence, at which said session a jury shall be empannelled to enquire of the complaint preferred, and if such jury shall, upon hearing the evidence, determine that the defen-

dant has done any act whereby the condition of his recognizance is broken, such act being named by them, the justices before whom the matter shall be tried, shall order the recognizance of such defendant to be established in His Majesty's court of king's bench, and such person shall be disabled from obtaining a license for the sale of beer, &c. for the space of one year then next.

Sec. 7. During fairs, persons may sell ale, &c. but not spirituous liquors, without a license.

Sec. 8. The magistrate to whom application is made for licenses, may determine the number of houses which shall be licensed, and if any person upon being refused shall feel aggrieved, such person may apply to the general quarter sessions for redress; and if the majority shall be of opinion that the applicant is entitled to a license, the chairman may grant such license.

Sec. 9. Act to continue in force two years, and to the end of the next session,—continued by the 7 G. 4. c. 11. and by the 2 W. 4. c. 21. passed 28th January, 1832, for four years, and to the end of the next session.

Information for selling Ale or Beer, &c. without a License. (Arch.)

Home District, } Be it remembered, that on the——— day of——
to wit. } in the year of our lord ——— at ——— in the said district, C. D. of——— in the said district, constable, who as well for our Sovereign Lord the King as for himself doth prosecute in this behalf, personally cometh before us J. P. and T. L. two of His Majesty's justices of the peace for the said District, and as well for our said Lord the King as for himself informeth us, that A. B. late of the township of ——— in the district aforesaid, labourer, within the space of six months now last past, to wit, on the ——— day of ——— in the year aforesaid, at the township aforesaid, in the district aforesaid, did sell ale, (ale or beer or cider) to wit, ten pints of ale by retail, without being licensed so to do, contrary to the form of the statute in such case made and provided, whereby and by force of the statute in such case made and provided, the said A. B. hath forfeited for his said offence, the sum of five pounds. Wherefore the said C. D. who sueth as aforesaid, prayeth the consideration of the said justices in the premises, and that the said A. B. may be summoned to appear before us, and answer the premises, and make his defence thereto.

Exhibited before us C. D.

The Summons.

Home District, } To A. B. of———
to wit. } Whereas you have this day been charged before us J. P. and T. L. two of His Majesty's justices of the peace for

the said district, on the information and complaint of C. D. of —— for that you within the space of six months, &c. *(here state the offence as laid in the information)*. These are therefore to require you to appear before us at —— in the said district, on —— next, the —— day of —— at the hour of —— in the —— noon of the same day, to answer to the said charge, and to be further dealt with according to law. Herein fail you not. Given under our hands and seals the —— day of —— in the year of our lord, 18—.

The Conviction.

May be in the form given by the 2 W. 4. c. 4. [see Conviction] as the above acts do not contain any specific form of conviction.

The Distress Warrant.

A general form will be found under that title.

The Commitment.

For want of sufficient distress, will also be found in a general form under the title "Commitment."

ALIENS.

AN ALIEN is one, generally speaking, who is born in a foreign country, out of the allegiance of the king. 4 *Bl. Com.* 372.

But by 7 Ann c. 5; 4 G. 2. c. 21; and 13 G. 3. c. 21; all children born out of the king's ligeance, whose *fathers* or *grandfathers* by the fathers side, were natural-born subjects, are deemed to be natural-born subjects themselves, to all intents and purposes; unless their said ancestors were attainted or banished beyond sea for high treason; or were, at the birth of such children, in the service of a prince at enmity with *Great Britain*.

The children of aliens born in the king's dominions, are natural-born subjects, unless the alien parents are acting in the realm as enemies; for it is not *cœlum nec solum* which gives them the rights of *Englishmen*, but their being born within the allegiance and under the protection of the king. 7 *Co.* 18 *A.* 1 *Bl. Com.* 374.

When an alien is indicted for any crime, the jury should be one half foreigners, if so many are found in the place; but this privilege does not hold in treason, since aliens are holden to be not the proper judges of what is a breach of the allegiance due to a *British* Sovereign. 4 *Bl. Com.* 352.

An alien residing in this country, may be indicted for high treason, if he aid even his own countrymen in acts of hostility to this kingdom. 1 *Haw. c.* 17. § 5. *Fost.* 185. *Salk.* 46. 2 *Ld. Ray.* 282. *East. P. C.* 53.

By the 9 G. 4. c. 21. the preamble of which recites, that it is expedient to remove by law, doubts that may have arisen as to the civil rights and titles to real estate, to certain persons therein mentioned, and to provide by some general law for the naturalization of such persons, not being by law entitled to be regarded as natural-born subjects, as were actually domiciled in this province, it is therefore enacted, as follows:—"that all persons who have held any public office in the province, under the great seal or privy seal of the province, or under the sign manual of the Governor, and all persons who have taken the oath of allegiance, or made affirmation of allegiance to His Majesty or his predecessors, before any person duly authorised to administer such oath or affirmation; and all persons who had their settled place of abode in this province before the year 1820, and are still resident therein, shall be, and are thereby admitted and confirmed in all the privileges of british birth and natural-born subjects: provided, that no one (except females) who has not taken the oath, or made the affirmation of allegiance, shall be entitled to the benefits of this act, unless he shall take the said oath or affirmation before some duly authorised person."

And by § 2. it is further enacted, "that all persons actually domiciled in this province on the 1st March, 1828, not being of the description before mentioned, who shall have resided, or shall continue to reside therein, or in some other part of His Majesty's dominions, for the space of seven years continually, without having been during that time stated, resident in any foreign country, shall be deemed and taken to be natural-born subjects, as if they had been born in this province: provided, that no one of the persons described in this clause, (except females) who, at the passing of this act has been resident in His Majesty's dominions seven years continually, as aforesaid, shall be entitled to the benefits of this act, unless within three years after the passing of this act, (if at the passing of the act he shall be sixteen years of age or upwards, or if not of that age, then within three years after he shall be of that age) he shall take and subscribe the oath in the schedule to this act, marked A, or affirm to the same effect, before the register, or deputy register of some county in this province; and that no one of the persons described in this clause, who has not been resident as aforesaid, seven years continually in His Majesty's dominions, shall be entitled to the benefits of this act, unless within three years after he shall have completed a stated residence of seven years continually, as aforesaid, in His Majesty's dominions, (if at the expiration of such residence he shall be of the age of sixteen years or upwards, or if at that time not of that age, then within three years after he shall have attained that age) he shall take and subscribe such oath or make such affirmation."

Form of the Oath.

A.

"I do swear, (or being one of the persons allowed by law to affirm in civil cases, do affirm,) that I have resided seven years in His Majesty's dominions, without having been during that time resident in any foreign country; and that I will be faithful and bear true allegiance to the Sovereign of the united kingdom of Great Britain and Ireland, and of this province, as dependent thereon."

By the 1 W. 4. c. 8. the period of three years mentioned in the last act for taking the oath, is extended to four years from the passing of this act, and thence to the end of the next session.

ALLEGIANCE.

ALLEGIANCE is the *tie* which binds the subject to the King, in return for the protection which the king affords the subject. 1 *Bl. Com.* 396. And there is an implied, original and virtual, allegiance owing from every subject to his sovereign, although the subject never swore any oath or allegiance in form. 2 *Inst.* 121. 1 *Bl. Com.* 368. which upon the death of the king, in actual possession of the crown, is due to his heir and successor before his coronation. 3 *Inst.* 7. 1 *Hale.* 61. 102. 1 *Haw.* c. 17. § 19.

Allegiance is of two sorts, the one *natural*, the other *local*; the former being perpetual, the latter only temporary.

Natural allegiance is such as is due from all men born within the king's dominions immediately upon their birth; and this cannot be forfeited, cancelled or altered, by any change of time, place or circumstance, nor by any thing but the united concurrence of the legislature. 1 *Bl. Com.* 359. 2 *P. Wm.* 124. 1 *Hale* 68. 96. *Fst.* 7.

Local allegiance is such as is due from an alien or stranger born, for so long a time as he continues within the king's dominions and protection; and this ceases the instant such stranger transfers himself from this kingdom to another. 1 *Bl. Com.* 370.

Oath of Allegiance.

I, A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to his Majesty King William the fourth, and him will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever which shall be made against his person, crown and dignity; and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs

and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against him, or any of them; and all this I do swear, without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power or persons whomsoever to the contrary. So help me God.

AMENDMENT.

By the 1 W. 4. c. 2. it is enacted, that any judge of any court of oyer and terminer and general gaol delivery, if such court or judge shall think fit, may cause the record on which any trial may be pending before any such court, in any indictment or information for any misdemeanor, when any variance shall appear between any matter in writing or in print, produced in evidence, and the recital or setting forth thereof upon the record whereon the trial is pending, to be forthwith amended in such particular, by some officer of the court.

APPEAL.

An appeal lies against a conviction, only in cases where it is expressly given by statute. *R. v. Hanson.* 4 *B.* & *A.* 519.

The statute which allows of an appeal, usually directs that a reasonable notice of the party's intention to appeal shall be previously given, either to the justices or to the complainant, or to both; but, unless required by the statute, a notice of appeal is not absolutely necessary; see *R. v. J.J.* of Essex, 4 *B.* & *A.* 276; and even in cases where such notice is required, it need not be in writing, unless required to be so by the statute. *R. v. J.J.* of Salop, 4 *B.* & *A.* 626. It is also required in many cases, that the party appealing shall enter into a recognizance with sureties conditioned to try the appeal, and to abide the judgment of the court thereon.

The terms in which these notices and recognizances are directed to be given by the several statutes, respectively, by which they are required, vary in many trifling particulars; but it may be sufficient to give the following forms, which have been framed upon one of Mr. Peel's acts, and which may be altered in particular cases, so as to make them conformable with the statute requiring them. *Archbold on Conv.*

Notice of Appeal. (Archbold.)

Home District, } To —— of —— in the said ——
to wit. } This is to give you [*and each and every of you*] notice, that I C. D. do intend, at the next general quarter sessions

of the peace, to be holden in and for the said district, at —— in the said district, to appeal against a certain conviction of me the said C. D. by J. P. Esquire, one of His Majesty's justices of the peace for the said district, for having as is therein and thereby alleged, [on —— &c. at —— &c. —— &c. [stating the offence] and that the cause and matter of such appeal are [that I am not guilty of the said offence,] and that [stating any other causes of appeal the party may have] of all which premises you [and each and every of you] are hereby desired to take notice.

Dated this —— day of —— &c.

Witness, E. H. C. D.

Recognizance. (Archbold.)

Home District, } Be it remembered, that on the —— day of —— to wit. } in the —— year of the reign of our Sovereign Lord W. the fourth, C. D. of —— labourer, L. M. of —— yeoman, and J. K. of —— grocer, personally came before me J. P. one of His Majesty's justices of the peace for the said district, and acknowledged themselves to owe to our said lord the king the sum of —— pounds, each, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said lord the king, his heirs and successors, if default shall be made in the condition following:

Whereas by a certain conviction, under the hand and seal of —— one of His Majesty's justices of the peace for the district aforesaid, the said C. D. is convicted, for that he on &c. [*stating the offence*]. And whereas the said C. D. hath given notice unto —— [within —— days after such conviction, and —— clear days before the next general quarter sessions of the peace] of his intention to appeal against the said conviction, and of the cause and matter thereof. Now, the condition of this recognizance is such, that if [the above bounden C. D. shall personally appear at the next general quarter sessions of the peace to be holden at —— in and for the said district, and shall then and there try such appeal and abide the judgment of the said court of quarter sessions thereupon, and pay such costs as shall be by the said court awarded] then this recognizance to be void.

Taken and acknowledged before me, J. P.

APPEAL.—*(Court of)*

By the 34 G. 3. c. 2. which establishes the court of King's Bench in this province, it is also provided by the 33 §, that the Governor, &c. or Chief Justice of this province, together with any two or

more members of the Executive Council of the province, shall compose a court of appeal, for hearing and determining all appeals from such judgments or sentences, as may be lawfully brought before them; and by § 35. an appeal shall lie to this court in all matters exceeding £100. upon proper security being given by the appellant to prosecute such appeal, and answer the condemnation and pay such costs as shall be awarded, in case the judgment or sentence appealed from shall be affirmed; and by § 36. the judgment of such court of appeal shall be final in all cases under £500. but in cases exceeding that sum, as well as in all cases relating to any annual or other rent customary, or other duty or fee, or any other such like demand of a general and public nature, affecting future rights, of what value or amount soever the sum may be, an appeal may lie to His Majesty in his privy council, upon proper security.

APPRENTICES.

AN APPRENTICE is one under age, who is bound by indenture to serve his master or mistress for a term of years during his minority.

The 5 Eliz. c. 4. commonly called the statute of apprenticeship, provides and enacts, that all indentures for a less term than seven years shall be void.

If this regulation be not complied with the indentures are *voidable* at the parties election. 1 *Anstr.* 256. 6 *Esp. R.* 8.

It has however been decided, that as between the parties themselves the indenture is not absolutely void, but *only voidable*, and that it must be avoided in a proper manner. *Rex. v. Evered. Caldecott's Rep.* 26. 1 *Botts.* 539. 1. 6 *Term Rep.* and when a party is bound as an apprentice for less than seven years, no third person can avail himself of this deviation from the statute, so as to protect him from liability to an action for enticing away such apprentice. 6 *Term Rep.* 652. 7 *Term. Rep.* 310. 314. and it is settled in the case of *Rex. v. St. Nicholas*, that a binding for four years gives a settlement, and Aston, Justice, said, "supposing the indenture voidable, I cannot conceive that the apprentice's *running away* can avoid them; had he served regularly, and during such service declared his intention to depart, it might have been different; here he would make use of his offence in order to avoid the punishment that attended it, but it is too late to do it before a justice, when charged with a crime. And Willes and Ashhurst, justices, were of the same opinion. 1 *Bott.* p. 525. pl. 709.

Again, in the case of *St. Nicholas v. St. Peters, (Burr. Sett. cases)* the same question was fully argued, and lord Hardwick, chief justice, in an elaborate judgment, said, "I am of opinion "that it does not make this Indenture void, but only voidable, if "the parties themselves think fit to take advantage of it;" and three other judges concurred in opinion.

It being, therefore, clearly established as law, that an apprenticeship may be good for a less term than seven years, until avoided by the parties in a legal and proper manner; until this be done, such apprentices are clearly within the operation of the various statutes relating to apprentices generally.

It has been held not an indictable offence to entice away an apprentice from his master, on the ground that it is not an act of a public nature, but a mere private injury, and therefore the proper subject of an action. *Rex. v. Daniel.* 6 *Mod.* 182. 1 *Salk.* 380. *Rex. v. Collingwood.*

At common law, an apprentice stealing his masters goods is guilty of felony, if they were simply under his *charge:* but not so, if entrusted to him to *keep* for his master, this being a breach of trust only. 1. *H. P. C.* 505. This however was made felony by Statute 21 H. 8. c. 7. in apprentices [not under eighteen years of age] embezzling to the value of forty shillings. It is a misdemeanor to solicit him to steal his master's goods, though no act be done by him as to the stealing. *Rex. v. Higgins.* 2 *East.* 5. *Rex. v. Collingwood, contra.*

It is an indictable offence to refuse or neglect to supply necessaries to a child, servant, or apprentice, whom a person is bound by duty or contract to provide for, if such child be of tender years and unable to provide for itself. *R. v. Friend. Russ. & Ry.* 20.

The apprenticeship may be determined by the death of the master, or the apprentice coming of age. *Ex. parte Davis. 5 Term Rep.* 715. *Chitty app. L.* 79.

Differences between the Master and Apprentice.

The master is allowed by law, with moderation, to chastise his apprentice. *Dalt.* c. 58.

But if the master and his apprentice cannot agree, they may proceed upon any one of the following statutes, applicable to the facts and circumstances of the case.

By 5 *Eliz.* c. 4. § 35. if any master shall misuse or evil entreat his apprentice, or the apprentice shall have any just cause to complain, or the apprentice do not his duty to his master, then the master or apprentice being grieved, and having cause to complain, shall repair unto *one* justice of the peace within the county, or

to the mayor or other head officer of the city, town corporate, market town, or other place, where the said master dwelleth, who shall by his wisdom and discretion take such order and direction between the master and his apprentice as the equity of the case shall require.

And if for want of good conformity in the master, the justice of peace, or the mayor or head officer, cannot compound and agree the matter between him and his apprentice, then the justice, or the mayor, or other head officer, shall take bond of the master to appear at the next sessions then to be holden in the county, or within the city, town corporate, or market town, to be before the justices of the said county, or the mayor or head officer of the town corporate, or market town, if the master dwell within any such.

And upon his appearance and hearing of the matter before the justice, or the mayor or other head officer, if it be thought meet unto them to discharge the apprentice of his apprenticehood, then the justices, or four of them at least, whereof one to be of the *quorum*, or the mayor or head officer, with the consent of three other of his brethren, or men of best reputation within the city, town corporate, or market town, shall have power by authority hereof, in writing under their hands and seals, to pronounce and declare that they have discharged the apprentice of his apprenticehood, and the cause thereof; and the writing so being made and enrolled by the clerk of the peace, or town clerk, amongst the records that he keepeth, shall be a sufficient discharge for the said apprentice against his master, his executors and administrators; the indenture of apprenticehood or any law or custom to the contrary notwithstanding.

And if the default shall be found to be in the apprentice, then the justices, or the mayor or other head officer, with the assistance aforesaid, shall cause such due correction and punishment to be ministered unto him, as by their wisdom and discretions shall be thought meet.

By 5 Eliz. c. 4. § 47. if any servant or apprentice of husbandry, or of any art, science, or occupation aforesaid, unlawfully depart or flee into any other shire, it shall be lawful to the justices of the peace, and to the mayors, bailiffs, and other head officers of cities and towns corporate, for the time being justice of the peace there, to make and grant writs of *capias*, so many and such as shall be needful, to be directed to the sheriffs of the counties, or to other head officers of the places whither such servants or apprentices shall so depart or flee, to take their bodies, returnable before them at what time shall please them, so that if they come by such process that they be put in prison, till they shall find sufficient surety well and honestly to serve their masters, mistresses, or dames, from

whom they so departed or fled, according to the order of the law.

By 20 G. 2. c. 19. § 3. it shall and may be lawful to and for any *two* or more justices of the peace of the county, riding, city, liberty, town corporate or place, where such master or mistress shall inhabit, upon any complaint or application by any apprentice, upon whose binding out no larger a sum than *five pounds* of lawful British money was paid, touching or concerning any misusage, refusal, or necessary provision, cruelty, or other illtreatment, of or towards such apprentice, by his or her master or mistress, to summon such masters or mistresses to appear before such justices at a reasonable time, to be named in such summons; and such justices shall and may examine into the matters of such complaints; and upon proof thereof made upon oath to their satisfaction, (whether the master or mistress be present or not, if service of the summons be also upon oath proved) the said justices may discharge such apprentice by warrant or certificate under their hands and seals, for which warrant or certificate no fee shall be paid.

And by § 4. it shall be lawful to and for such justices, upon application or complaint made, upon oath, by any master or mistress, against any such apprentice, touching or concerning any misdemeanor, miscarriage, or illbehaviour, in such his or her service, (which oath such Justices are hereby empowered to administer) to hear, examine, and determine the same, and to punish the offender by commitment to the house of correction, there to remain and be corrected and held to hard labour for a reasonable time, not exceeding *one calendar month*, or otherwise by discharging such apprentice in manner and form before mentioned.

By § 5. provided, that if any person or persons shall think himself, herself or themselves, aggrieved by such determination, order or warrant, of such justice or justices as aforesaid, (save and except any order or commitment) he, she or they, may appeal to the next general quarter sessions of the peace, to be held for the county, riding, liberty, city, town corporate or place, where such determination or order shall be made; which said next general quarter sessions is hereby empowered to hear and finally determine the same, and to give and award such costs to any of the respective persons, *appellant* or *respondent*, as the said sessions shall judge reasonable, not exceeding forty shillings, the same to be levied by distress and sale.

By § 6. and 7. it is also provided, that no *certiorari*, or other process shall issue or be issuable to remove any proceedings whatsoever had in pursuance of this act, into any of his Majesty's courts of record at *Westminster*.

By 6 *Geo.* 3. c. 25. if any apprentice (except such whose master shall have received with such apprentice the sum of *ten pounds*,)

shall absent himself from his master's service, before the term of his apprenticeship shall be expired, every such apprentice shall, at any time or times thereafter, whenever he shall be found, be compelled to serve his said master for as long a time as he shall have so absented himself from such service, unless he shall make satisfaction for the loss he shall have sustained by his absence from his service, and so from time to time as often as any such apprentice shall, without leave from his master, absent himself from his service before the term of his contract shall be fulfilled; and in case any such apprentice shall refuse to serve as hereby required, or to make such satisfaction to his master, such master may complain upon oath to any justice of the peace of the county or place where he shall reside, which oath such justice is hereby empowered to administer, and to issue a warrant under his hand and seal for apprehending any such apprentice; and such justice upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice; and in case such apprentice shall not give security to make such satisfaction according to such determination, it shall and may be lawful for such justice to commit every such apprentice to the house of correction, for any term not exceeding *three months.*

By § 3. such application must be made within seven years after the end of the term of the apprenticeship.

And by § 5. any party aggrieved may appeal to the next general quarter sessions, giving six days notice to the justice, and entering into a recognizance within three days after such notice, with sufficient surety to try such appeal, and abide the order of and pay such costs as should be awarded by the sessions.

Upon these acts Mr. Chitty, in his treatise on the law relative to apprentices observes, that a more extensive power is given to the sessions than to justices in the first instance. That under the statute 5 Eliz. c. 4. *one justice* is only constituted a mediator, and has no power to proceed, unless the master agree to be bound by his determination, and if he do not, the only course is to resort to the *sessions;* but if the master agree, though the apprentice do not, the magistrate may by order under hand and seal, direct him to be discharged: for no option is given by the statute to the apprentice, but only to the master.

The power given over indentures of apprenticeship to *two* magistrates, by the 20 G. 2. c. 19. is confined to *apprentices, where the præmium does not exceed five pounds.*

Besides the power of *discharging*, the sessions have by the 35 § of 5 Eliz. c. 4. power to cause such due *correction and punishment* to be ministered unto the apprentice as they may think fit, and by virtue of this clause they may commit the apprentice; and Dr.

Burn observes, that this being left indefinite, it seems most apposite that the justices commit the apprenticed to the house of correction for a time, to be kept to hard labour, or otherwise corrected, as the nature of the offence may require; but that this clause in the act does not restrain but enlarges the power of magistrates over apprentices, beyond the power given them over masters, whom the justices cannot punish, and the magistrates may inflict corporal punishment, or discharge an apprentice at their discretion.

Proceedings at Sessions under 5 Elizabeth.

An order of discharge may be made upon the application of either party, for an apprentice may be discharged from a bad master, and a bad apprentice from his master. 1 *Saund.* 315. 16. 313. *n.* 2.

But the sessions cannot discharge without setting forth some cause in their order. 1 *Bott.* 577. 2 *Str.* 1013. *Ib.* 704. 1 *Bott.* 576.

The usual causes for which the apprentice complains against the master are cruelty and misusing his contract, either by neglecting to instruct him, or the like.

And when the master applies to get rid of his apprentice it is generally upon the ground of incorrigible behaviour.

There is no power to discharge for sickness, as "where the apprentice was lame and in the surgeons opinion incurably afflicted," for the master takes him for better or worse, and is to provide for him in sickness and in health. 1 *Str.* 99. 1 *Bott.* 574.

The order must be under the hands and seals of four justices, and enrolled as the act directs, or the superior courts will set it aside. 1 *Saund.* 316. *n.* 5. 2 *Salk.* 470. 1 *Bott.* 572. 1 *Str.* 99.

The power of discharge is confined, in counties, to four justices at the least, and must be made at a general sessions, and not a private sessions, or the order may be set aside. 1 *Skin.* 98. 1. *Bott.* 572.

If against the Master.

Although the 5 Eliz. requires the discharge to be made on the masters appearance, the court held that the act must have a reasonable construction, and the sessions might proceed in the masters absence, otherwise, if he ran away, the apprentice could not be discharged. 2 *Salk.* 491. 1 *Bott.* 572.

Common form of an Indenture of Apprenticeship.

This Indenture witnesseth, that A. B. of the age of —— years, the son of B. C. of the township of —— in the home district, yeo-

man, by and with the consent of his said father, doth put himself apprentice to C. D. of the city of Toronto, shoemaker, to learn his art, and with him after the manner of an apprentice, to serve from the day of the date of these presents, unto the full end and term of —— years from thence next following, to be fully complete and ended; during which term the said apprentice his master faithfully shall serve, his secrets keep, his lawful commands every where gladly do: he shall do no damage to his said master, nor see to be done of others, but to his power shall let or forthwith give warning to his said master of the same: he shall not waste the goods of his said master, nor lend them unlawfully to any: he shall not commit fornication nor contract matrimony within the said term: he shall not play at cards, dice tables, or any other unlawful games, whereby his said master may have any loss with his own goods or others, during the said term, without license of his said master: he shall neither buy nor sell: he shall not haunt taverns or play-houses, nor absent himself from his said master's service day or night, unlawfully, but in all things as a faithful apprentice he shall behave himself towards his said master and all his, during the said term. And the said C. D. in consideration of the faithful services of the said apprentice, and of the sum of £—— of lawful and current money of the province of Upper Canada, to him in hand paid by the said B. C. at or immediately before the execution hereof, the receipt whereof is hereby acknowledged, his said apprentice in the art of a shoemaker which he useth, by the best means that he can, shall teach and instruct, or cause to be taught and instructed, finding and providing unto the said apprentice sufficient meat, drink, lodging and all other necessaries, during the said term, [and moreover, here add any special contract for wages, in case any are to be paid to the apprentice,] and for the true performance of all and every the said covenants and agreements, each of the said parties bindeth himself unto the other, and others of them firmly by these presents. In witness whereof the parties above named to these indentures interchangeably have put their hands and seals, at the city of Toronto aforesaid, the —— day of —— in the year of our Lord, 183—.

Signed, sealed, and delivered in the presence of ——
E. K. Schoolmaster.

A. B. L.S.
B. C. L.S.
C. D. L.S.

Summons of the Master for misusing his Apprentice, on 5 Eliz. c. 4. (Burn.)

To the Constable of the Township of ——.

Home District. } Whereas complaint and information hath been made unto me —— one of His Majesty's jus-

tices of the peace in and for the said district, by A. B. apprentice to C. D. of —— in the said township, shoemaker, that the said C. D. hath misused and evil entreated him the said A. B. *(by cruel punishment, and beating him the said A. B. without just cause, and by not allowing unto him sufficient meat, drink, apparel, or as the case may be.)* These are, therefore, in His Majesty's name, to command you to summon the said C. D. to appear before me, at the house of —— in the said township, on —— the —— day of —— at the hour of —— in the afternoon of the same day, to answer unto the said complaint, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, the —— day of —— &c.

Summons of the Apprentice on complaint of the Master, on 5 *Eliz. c.* 4. *(Burn.)*

To the Constable of ——.

Home District. } Whereas complaint and information hath been made unto me —— one of His Majesty's justices of the peace in and for the said district, by C. D. of —— in the said district, shoemaker, that A. B. now being an apprentice to him the said C. D. is negligent, stubborn, disorderly, *(or as the case may be)* and doth not his duty to him his said master. These are, therefore, to command you to summon the said A. B. to appear before me at —— in the said Township, on the —— day of —— at the house of —— in the afternoon of the same day, to answer the said complaint, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, &c.

Form of Recognizance to appear at the Sessions.

See the usual form—Title Recognizance.

The condition of the above recognizance is such, that if the above bounden C. D. shall and do appear at the next general quarter sessions of the peace to be holden in and for the home district, and then and there answer to a complaint to be preferred against him by A. B. his apprentice, and not depart the court without leave, then this recognizance to be void.

Taken and acknowledged, &c.

Order of discharge by four Justices at the Sessions, on the 5 *Eliz. c.* 4. § 35. *(Burn.)*

Home District. } At a general quarter sessions of the peace holden at —— in and for the said home district, the

—— day of —— in the —— year of the reign of our sovereign lord William the fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, defender of the faith, and so forth, before —— justices of our said lord the king, assigned to keep the peace in the said district, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said district committed, and of the quorum—it is ordered as followeth:—

Upon the petition of A. B. apprentice to C. D. of —— in the said district, shoemaker, to be relieved, upon certain neglects of the said master in instructing him in his trade, and in misusing and evil entreating the said apprentice by cruel punishment, *(or as the case may be.)* And the said master having likewise appeared, upon his recognizance taken before J. P. Esquire, one of the said justices, to answer to the complaint of the said petition, and having proved nothing whereby to clear himself of the said complaint, but on the contrary, the said A. B. having given full proof of the truth of the said complaint, to the satisfaction of the said court, we therefore, whose hands and seals are hereunto set, being four of the said justices, and of the quorum, do hereby order, pronounce and declare, that the said apprentice shall be, and is hereby discharged and freed from his said apprenticehood. And this is to be a final order betwixt the said master and apprentice, any thing in their indenture of apprenticeship, or otherwise, to the contrary, notwithstanding. Given under our hands and seals, the day and year first above written.

Complaint of an Apprentice to two Justices, against his Master, on 20 *G.* 2. *c.* 19. *where the præmium paid is not over* £5.

Home District, } The information and complaint of A. P. apprentice to A. M. of —— husbandman, exhibited before us, two of His Majesty's justices of the peace in and for the home district, the —— day of —— in the year, &c. who saith, that he the said A. P. is an apprentice, bound by indenture, to A. M. of —— aforesaid, husbandman, and that he the said A. M. hath misused and ill treated him the said apprentice, and particularly, that on or about the —— day of —— (here state the facts.)

Before us, A. P.

J. P.

K. P.

Summons of the Master, by two Justices, on complaint of the Apprentice, on the 20 *G.* 2. *c.* 19. § 3.

To the Constable of ——.

Home District. } Whereas information and complaint hath been made unto us —— two of His Majesty's justices of the peace in and for the said district, by A. P. apprentice to A. M. of —— in the said district, that he the said A. M. hath misused and ill treated him the said A. P. and particularly, (*here state the facts.*) These are, therefore, to require you to summon the said A. M. to appear before us at —— in the said district, on —— the —— day of —— to answer unto the said information and complaint. And be you then there, to certify what you shall have done in the execution hereof. Herein fail not.—Given under our hands and seals, the —— day of ——.

Discharge of an Apprentice, by two Justices, on the Master misusing him, by the 20 *G.* 2, *c.* 19. § 3.

Home District. } Whereas complaint hath been made before us, —— two of His Majesty's justices of the peace in and for the said district, by A. P. apprentice to A. M. of —— in the said district, tailor, that he the said A. M. hath misused and evil treated him the said apprentice, and particularly, (*set forth the particulars.*) And whereas the said A. M. hath appeared before us, in pursuance of our summons for that purpose, but hath not cleared himself of and from the said accusation and complaint, but on the contrary, the said A. B. hath made full proof of the truth thereof, before us, upon oath. We therefore, by these presents, do discharge him the said A. P. of and from his apprenticeship to the said A. M. any thing in the indenture of apprenticeship made between them, or otherwise, howsoever, to the contrary, notwithstanding. Given under our hands and seals, the —— day of —— &c.

[Or—And whereas it hath been duly proved before us, as well upon the oath of A. G. constable of —— aforesaid, as otherwise, that he the said A. C. did duly summon the said A. M. to appear before us at a reasonable time, in the said summons mentioned and specified; but notwithstanding the same, he, the said A. M. hath not appeared before us, according to such summons. We therefore, having duly examined into the matter of the said complaint, and the truth thereof having been fully proved before us, upon oath, do discharge, &c.]

Complaint to two Justices, of the Master against his Apprentice—on the 20 *G.* 2. *c.* 19. § 4.

Home District. } The complaint and information of A. M. of —— in the home district, husbandman, taken and made on oath before us, —— two of His Majesty's justices of the peace in and for the said district, the —— day of —— who saith, that A. P. by indenture to him the said A. M. hath in the service of his apprenticeship been guilty of several misdemeanors, miscarriages, and ill behaviours, towards him the said A. M. and particularly *(as the case shall be.)*

Before us, A. M.

J. P.

K. P.

Warrant for a disorderly Apprentice, by two Justices, on the aforesaid complaint—by the 20 *G.* 2. *c.* 19 § 4.

To the Constable of ——.

Home District. } Whereas oath hath been made before us —— two of His Majesty's justices of the peace in and for the said district, by A. M. of —— in the said district, husbandman, that A. P. apprentice to the said A. M. hath committed divers misdemeanors against the said A. M. his master, and particularly, *(as the case shall be.)* These are, therefore, to require you forthwith to apprehend the said A. P. and bring him before us, to answer unto the said complaint, and to be dealt with according to law; and you are to give notice to the said A. M. that he appear before us at the same time, to make good the said complaint. Given under our hands and seals the —— day of —— 18—.

Commitment of an Apprentice to the House of Correction on complaint of his Master, by two Justices, on the 20 *G.* 2. *c.* 19. § 4.

Home District, } To the constable of —— in the said district, and to the keeper of the house of correction at—— in the said district.

Whereas complaint hath been made before us —— two of His Majesty's justices of the peace in and for the said district, upon the oath of A. M. of —— in the said district, husbandman, that A. P. apprentice of the said A. M. hath committed divers misdemeanors against him the said A. M. his master, and particularly *(as the case may be)*. And whereas upon examination thereof, and upon hearing the allegations of both parties, having come before

us for that purpose, and upon due consideration had thereof, it manifestly appears to us that he the said A. P. is guilty of the premises so charged against him, as aforesaid. We do therefore hereby command you the said constable, to take and convey the said A. P. to the said house of correction, and to deliver him to the said keeper thereof, together with this warrant: and we do hereby command you the said keeper of the said house of correction, to receive the said A. P. into your custody in the said house of correction, there to remain and be corrected, and held to hard labour for the space of ——. Given under our hands and seals, the —— day of ——

Discharge of an Apprentice by two Justices on complaint of the Master, by 20 *G.* 2. *c.* 19. § 4.

Home District, } Whereas complaint &c. *(as in the last precedent)* We do therefore by these presents discharge the said A. P. from his apprenticeship to the said A. M. any thing in any indenture or indentures of apprenticeship betwixt them, or otherwise to the contrary notwithstanding. Given &c.

Assignment of an Apprentice.

To all to whom these presents shall come: I A. M. of —— send greeting.

Wheres my apprentice A. P. hath divers years yet to come and unexpired of his apprenticeship, to wit —— whole years, from the ——.day of —— now last past, as by his indenture of apprenticeship to me sealed doth appear. Now know ye, that I the said A. M. for divers good causes and considerations, me hereunto moving, have given, granted, assigned and set over, and by these presents do fully and absolutely give, grant, assign and set over, unto A. S. of —— all such right, title, duty, term of years yet to come, service and demand whatsoever, which I the said A. M. have in or to the said A. P. or which I may or ought to have in him by force and virtue of the said indenture of apprenticeship; and moreover I the said A. M. do by these presents covenant, promise and agree with, and to the said A. S. his executors and administrators, that notwithstanding any thing by me the said A. M. to be done to the contrary, the said A. P. shall during the said term of —— years, well and truly serve the said A. S. as his master, and his commandments lawful and honest shall do, and from his service shall not absent himself during the said term: provided, that the said A. S. shall well entreat and use him the said A. P. and him the said A. P. in the craft, mystery and occupation of a —— which he the said A. S. now useth, after the best manner that he can or may, shall teach, instruct and inform, or cause to be taught,

instructed and informed, as much as thereunto belongeth or in any wise appertaineth, and shall also during the said term find and allow unto the said A. P. sufficient meat, drink, apparel, washing, lodging, and all other things needful or meet for an apprentice.

In witness, &c.

APPROVERS.

AN APPROVER is a person who (when indicted of treason or felony and arraigned for the same,) confesses the fact before plea pleaded, and appeals or accuses others, his accomplices of the same crime, in order to obtain his pardon: in this case he is called an approver. Such approvement can only be in capital offences, and is, as it were, equivalent to an indictment; for the appellee is equally called upon to answer it; and if he hath no reasonable or legal exceptions to make to the approver, (which were formerly very numerous) he must put himself upon his trial, and if found guilty must suffer judgment, and the approver shall have his pardon *ex debito justitiæ*.

On the other hand, if the appellee be acquitted, the approver shall receive judgment to be hanged, upon his own confession of the indictment; for the condition of his pardon has failed, viz., the convicting of some other person, and therefore his conviction remains absolute. 3 *Inst.* 129. 4 *Bl. Com.* 230. 2 *Hale* c. 4. 29. 2 *Haw.* c. 24.

But this course of admitting approvements has long been disused, and the law upon the subject is now become merely matter of curiosity. But what has most contributed to render the system of approvement obsolete, is the practice which has now prevailed for many years, of the committing magistrate admitting an accomplice to become a witness (or as it is generally termed *king's evidence*) against his fellows, upon an implied confidence, which the judges of gaol delivery have usually countenanced and adopted, that if such accomplice makes a full and complete discovery of that and all other felonies, to which he is examined by the magistrate, and afterwards gives his evidence without prevarication or fraud, he shall not himself be prosecuted. 4 *Bl. Com.* 331.

And see—*post; King's Evidence.*

ARBITRATION.

BY 9 & 10. *W.* 3. c. 15. § 1. All merchants and others, desiring to end any controversy (for which there is no remedy but by personal action or suit in equity) by arbitration, may agree that their submission of the suit to the award of any persons shall be made

a rule of any of his Majesty's courts of record, and may insert such their agreement in their submission, or the condition of the bond or promise; and upon producing an affidavit of such agreement, and upon reading and filing such affidavit in court, the same may be entered of record, and a rule shall be thereupon made, that the parties shall submit to, and finally be concluded by such arbitration; and in case of disobedience thereto, the party shall be subject to all the penalties of contemning a rule of court, and process shall issue accordingly; which shall not be stopped by any order, &c. of any other court, either of law or equity, unless it appear on oath, that the arbitrators or umpire misbehaved themselves, and that such award was corruptly procured.

Any arbitration or umpirage procured by corruption or undue means, shall be void and set aside by any court of law or equity, so such corruption or undue practice be complained of in the court where the rule is made for such arbitration, before the last day of the next term after such arbitration made and published to the parties. § 2.

The Form of an Agreement.

Articles of agreement entered into and concluded upon this —— day of —— 1834, between A. B. of —— of the one part, and C. D. of —— of the other part. Whereas *(here state the subject in dispute, and that an action is now pending in the Court of K. B.)* And whereas the said A. B. and C. D. for the purpose of putting an end to all further controversy touching the several matters in question, have respectively agreed to refer all questions, differences and disputes whatsoever, now pending in the said matters, *(and if an action is pending, "also by whom, to whom, and in what manner, the costs of all the parties in such cause or suit shall be paid")* to the consideration, judgment and arbitrament, and final award of —— being a person indifferently named and chosen by the parties hereto, as an arbitrator in the premises; and further, that the said reference and submission shall and may, in pursuance of the statute in that behalf made and provided, be made an order of his Majesty's said court of king's bench, if the said court shall think fit to order the same. Now these presents witness, that for the consideration and purposes aforesaid, it is hereby declared and agreed upon by and between the said parties to these presents, that they the said parties hereto, and each of them their, and each of their heirs, executors and administrators, on his and their respective parts, shall and will well and truly stand to, abide by, perform, fulfil and keep, the order, arbitrament, final determination, and award of the said —— the arbitrator so as aforesaid, indifferently named and chosen by them the said parties

hereto, to adjudge, arbitrate, determine, order and award between them, of and concerning all questions, titles, controversies, differences and disputes, now depending or subsisting between them in the premises, and also by whom and in what manner, and to whom the costs in the said suit are or ought to be paid, so as the said arbitrator shall make such his order, arbitrament, final determination and award, in writing under his hand and seal, ready to be delivered to the said parties, or such of them as shall require the same, on or before the —— day of —— next ensuing the date of these presents. And it is hereby agreed by and between the said parties hereto, that no action at law or suit in equity, shall be commenced or prosecuted by any or either of them against the said —— for or on account of his award, to be made pursuant to this agreement.

In witness whereof the said parties to these presents, have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered, in the presence —— E. F. } A. B. L.S. C. D. L.S.

The Award.

To all to whom these presents shall come: I —— of —— yeoman, send greeting.

Whereas *(here recite the subject matter in dispute, and the agreement to refer the same to arbitration, as in the above form)*. Now know ye, and these presents witness that I the said —— having taken upon myself the said reference, and having heard the statement of the parties and their witnesses, and having examined the matters and proofs produced on both sides, and having investigated the transactions and accounts by and between the said parties, and maturely considered the same, do make my award in manner following, that is to say,—I do hereby award and determine that there is now justly due and owing to the said A. B. from the said C. D. the sum of £—— upon a balance of account: and I do award, order and direct, that the said C. D. shall pay the said sum of £—— to the said A. B. or his order, within —— after the publication of this my award, and notice thereof in writing given to the said C. D.: and I do further order and direct, that each of the said parties shall pay his own costs, charges and expenses, of and concerning the said suit, and of all matters whatsoever attending the said reference:* and I do further order and

* The arbitrator may award otherwise, as he may think proper, and award either party to pay the whole.

direct, that the costs and charges of and attending this my award, shall be paid equally between the said parties. In witness whereof I have hereunto set my hand and seal, the—— day of—— 183—
Signed, sealed, and delivered, }
in the presence of —— }

ARRAIGNMENT.

THE arraignment of a prisoner consists in calling him to the bar by his name, and commanding him to hold up his hand, in order to identify his person, reading over distinctly the indictment to him, that he may understand the charge, and demanding of him whether he is "guilty" or "not guilty." The practice until late was, to ask him, in addition, how he would be tried—to which the answer required was—"by God and my country." But now by the 3 *W.* 4. *c.* 4. § 17. if a person shall plead "not guilty," he shall by such plea, without any further form, be deemed to have put himself on the country for trial.

Standing mute upon arraignment shall be equivalent to a plea of "not guilty." *Ib.*

The prisoner should stand at the bar till he receives judgment, without irons, shackles or bonds. 2 *Hale*, 219.

ARREST.

AN arrest is, in the criminal law, an apprehending or restraining of the person of any individual, in order to be forthcoming to answer an alleged or suspected offence or crime: and to such an arrest all persons whatsoever, without distinction, are equally liable; but no man can, in general, be arrested, unless charged with such a crime as will at least justify holding him to bail when taken. 4 *Bl. Com.* 289.

Arrest by Warrant.

A warrant may be granted, in extraordinary cases, by the privy council, or any of the secretaries of state, but ordinarily, by justices of the peace. 1 *Ld. Raym.* 65.

A justice may grant a warrant in all cases where he has a jurisdiction over the offence, in order to compel the person accused to appear before him. 12 *Co.* 130. 2 *Haw.* 84. *Bane v. Methuen.* 2 *Bing.* 63.

Thus a warrant may be granted in all treasons, felonies, and breaches of the peace, and also for all such offences as a justice has power to punish by statute.—*Ibid.* So a justice may grant

a warrant against an offender charged on oath with having published a *libel*, and compel him to find sureties. *Butt. v. Conant.* 1 *Brod. & B.* 548.

It may be issued also to apprehend a person accused of felony, though not indicted, or to apprehend a person suspected of felony, though the original suspicion be not in the justice issuing the warrant, but in the party that prays it, for the justice is the competent judge of the probability offered to him of such suspicion. 2 *Hale. P. C.* 108. *and see* 34 *Edw.* 3. *c.* 1.

But no warrant should in any case be granted without an examination upon oath of the party requiring it, as well to ascertain that there is a felony or other crime actually committed, as also to prove the cause and probability of suspecting the party against whom the warrant is prayed. 2 *Hale*, 110.

The reasonable grounds of suspicion are—common fame; being found in such circumstances as induce a strong presumption of guilt; the flight or escape of the person suspected; being found in evil company; or living an idle, vagrant and disorderly life. 2 *Haw.* 76.

The warrant should be under the hand and seal of the justice; should set forth the time and place of making, and the cause for which it is made; and should be directed to the constable, or other peace officer, (or it may be to any private person, by name, (*Salk.* 176) requiring him to bring the party, either generally, before any justice of the peace for the county, (or district) or only before the justice who granted it: the warrant in the latter case being called a special warrant. 2 *Haw.* 85. 4 *Bl.* 290.

A general warrant to apprehend all persons suspected, without naming or describing any person in particular, is illegal and void, for its uncertainty. 1 *Hale* 580. 2 *Haw.* 82.

In like manner, a *blank warrant* filled up by a *third person*, with the name of an officer after the warrant is signed and sealed by the magistrate, is illegal. *Stockley's case*, 1 *East. P. C.* 310. *Houson v. Barrow*, 6 *T. R.* 122. *Stevenson's case*, 10 *St. Tr.* 462.

The cause of the arrest should be stated with sufficient certainty on the face of the warrant, in order to shew the jurisdiction of the court, or magistrate granting it.

When a warrant properly penned is received by the officer, he is bound to execute it within the district for which the jurisdiction of the magistrate extends; and the officer will (by 24 *G.* 2. *c.* 44) be in that case indemnified, even though the magistrate should not have strict authority to grant it. 4 *Bl.* 291.

The warrant of a justice of the peace in one district, must be backed, that is, signed by a justice of the peace in another, before it can be executed in the latter district. And see 23 *G.* 2. *c.* 26. and 24 *G.* 2. *c.* 55.

When a constable, after he has arrested the party under a warrant, suffers him to go at large, upon his promise to come again and find sureties, he cannot afterwards arrest him by force of the same warrant; but if the party return and put himself again under the custody of the constable, it seems that the constable may then lawfully detain him and carry him before the justice. 2 *Haw.* 81.

And if the party escape, the officer may take him again, although he goes out of view, or flies into another town or county. *Dalt. c.* 169.

Arrest without Warrant.

A *justice of the peace* may apprehend, or cause to be apprehended, by word only, any person committing a felony, or breach of the peace, in his presence. 1 *Hale* 86. And see 34 *Edw.* 3. *c.* 1.

So the *sheriff*, and the *coroner*, may apprehend any felon within the county, without warrant. 2 *Hale* 87. 88. 4 *Bl. Com.* 292.

So also the *constable* may arrest any one for a felony or breach of the peace, committed in his view, and carry him before a justice of the peace. And in case of a felony actually committed, or a dangerous wounding whereby felony is likely to ensue, he may also, upon probable suspicion, arrest the party, notwithstanding the suspicion arise not in his own mind, but in that of some other person, who communicates it to the constable. But in this last case he ought to inquire scrupulously into the causes of the suspicion; for though he cannot do this upon oath, it may reasonably carry over the suspicion to his own mind. 2 *Hale* 91.

And although it should afterwards appear that no felony has been committed, yet he may justify an arrest without a warrant on a charge of felony made by another person, on reasonable cause of suspicion.—*Samuel* v. *Payne* 359. Or even if, without any charge, the constable himself has reasonable cause of suspicion. *Beckwith* v. *Shilby.* 6 *B.* & *C.* 635.

And if one menace another to kill him, and complaint be made to the constable forthwith, the constable may (in order to avoid the present danger) arrest the party, and detain him till he can conveniently bring him to a justice of the peace; and this on the ground that it is the duty of the officer to prevent a probable felony, (2 *Hale* 88; or, according to *Dalton, c.* 116. § 3.) even a probable battery or assault.

Watchmen, who are appointed by the statute of *Winchester*, (13 *Edw.* 1.) to keep watch and ward in all towns, from sun-setting to sun-rising, or such as are mere assistants to the constable, may arrest all offenders, and particularly *night-walkers*, and *disorderly persons*, and commit them to custody till the morning. 2 *Hale* 98.

By private persons.

Any *private person*, who is present when any felony is committed, is bound by the law to arrest the felon, on pain of fine and imprisonment if he escape through his negligence. 2 *Haw.* 74.

So where an indictment is found against a party, a private person may arrest the offender. *Dalt. c.* 170. § 5. 1 *Haw. c.* 28. § 12. 1 *East. P. C.* 301.

A private person may arrest any suspicious nightwalker, or a common cheat, in order to take them before a justice. 1 *Jones* 249. *Cro. Car.* 274. 2 *Rol. Ab.* 546.

The manner of making an Arrest.

The party arrested should have due notice of the officers' authority. 1 *Hale*, 458. 470. 1 *Haw. c.* 31. § 49. 50. *Fost.* 310. *Kel.* 136.

But otherwise, if the officer and his business be known. *Mackally's case.* 9. *Co.* 69. *Pew's case. Cro. Car.* 183. And this will apply as well to a special bailiff as to a known officer. 2 *Russ.* 787.

After a due notification to the party, a bailiff *juratus et cognitus* (sworn and known) acting in his own district, need not shew the warrant by which he is constituted bailiff. 1 *Hale*, 458. 461. 583. 9. *Co.* 69. *Gordon's case.* 1 *East. P. C.* 315; or, as it seems, the particular warrant directed to him to execute, 1 *East. P. C.* 315.

But if he acts out of his precinct, and is not sworn, or commonly known, he must then shew his warrant, if demanded. 1 *Hale.* 459. *Fost.* 320.

If the constable has no authority, a notification of his authority becomes more essential. In this case, it seems that the production of his *staff* of office, or any other known ensign of authority, will be sufficient. 1 *Hale* 460. *et. seq. Fost.* 310. *Kel.* 66. 115. 1 *Russ.* 738.

An arrest in the night is good, both at the suit of the king and of the subject, in order to prevent the escape of the party. 9 *Co.* 66.

Bare words will not make an arrest, without laying hold on the person, or otherwise confining him. But if an officer comes into a room, and tells the party he arrests him, and locks the door, this is an arrest. 1 *Salk.* 79. 2 *Haw.* 129. *Cas. temp. Hard.* 301.

Doors and windows may be broken open if necessary, in order to make an arrest under a magistrates warrant, or any other criminal process: but in this case, the officer must first signify to those in the house the cause of his coming, and request admittance. 2. *Haw.* 86. 1 *Hale.* 459. 2 *Hale*, 117. *Dalt. c.* 169. *Fost.* 320. 1 *East. P. C.* 315.

And as an officer may break open a man's own house, so may he break open the house of a stranger, in order to take him; but the parties must be there, if not, the officer will be a trespasser. 2 *Hale.* 117; unless acting under a magistrates warrant.

Where one is *known* to have committed a treason or felony, or to have given another a dangerous wound—then if pursued by an officer, or even a *private person*, with or without warrant, doors may be broken to apprehend him. 1 *Hale.* 459. 2 *Haw. c.* 14. § 7. *Fost.* 320.

Upon any *process of contempt* from courts of justice, the officer charged with the execution of such process, may break open doors, if necessary, to execute it. *Burdett v. Abbott.* 14 *East.* 157.

So the like may be done upon a *capias ut lagatum*, a *capias pro fine*, or upon an *habere facias possessionem*, or where a *forcible entry* or *detainer* is found by inquisition, before justices of peace, or appears upon their view. 2 *Haw. c.* 14. § 6. 4 *Com. Dig. bit. Forcible entry (D.* 6.)

Or on the warrant of a justice for *levying a penalty* on a conviction grounded on any statute, which gives the whole or any part of such penalty to the king. 2. *Haw. c.* 14. § 5. But in this case the officer, if required, must shew the warrant, and suffer a copy to be taken. 27 *G.* 2. *c.* 20.

So where there is an *affray* in a house, in the view or hearing of the constable, and manslaughter or bloodshed is likely to ensue, he may break open doors to keep the peace. 2 *Hale.* 95. 1 *Haw.* 137. 2 *Haw.* 87.

So if there be a *disorderly* drinking or noise in a house, at an unreasonable time of night, especially in inns, taverns, or alehouses, the constable, or his watch (demanding entrance and being refused) may break open the doors, to see and suppress the disorder. 2 *Hale.* 95.

So wherever a person *escapes* from a lawful arrest, and shelters himself in a house, the officer may break open doors to retake him, whatever the cause of arrest may have been. 2. *Haw.* 87. But if it be upon a fresh pursuit, the officer (it seems) should have a warrant. 1 *East. P. C.* 324.

And in any of the above cases where the officer enters a house, and the doors are locked upon him to prevent his egress, he may break them open to regain his liberty. *Ibid.*

What is to be done after making an Arrest.

When the arrest is by warrant, the officer who has made it should forthwith bring the party before a magistrate, according to the direction of the warrant. If the warrant be to bring the defendant before *any* justice of the district, then the officer may bring

him before what justice he thinks fit; for the defendant himself has no election in the matter. 1 *Hale.* 582. 2 *Ib.* 112.

If the time be unseasonable, as in or near the night, whereby he cannot attend the justice; or if there be danger of a present rescue; or if the party be sick, then the constable may keep the party in a house, or any place of security, till the next day, or such time as it may be reasonable to bring him. 2 *Hale.* 120.

And after the officer has brought him to a justice, yet he is still in custody, till the justice discharge, or bail, or commit him. *Ibid.*

But the constable need not return the warrant itself, but may keep it for his own justification, in case he should be questioned for what he has done upon it, *Ld. Raymond.* 1196.

(For the form of warrant, see Warrant.)

ARSON.

ARSON, at common law, means the malicious and wilful burning of a house, or out-house, of another man; and being an offence of very great malignity, was always considered of the degree of felony. 1 *Haw.* 105.

By Statute.

The Statutes relating to this offence are the 23 *H.* 8. *c.* 1. 25 *H.* 8. *c.* 3. 4 & 5 *Ph. M. c.* 4. 22 & 23 *C.* 2. *c.* 7. all of which are now obsolete.

By Stat. 6 *An. c.* 31. if any servant through negligence or carelessness shall set fire to any dwelling-house, he shall forfeit £100. and in default of payment be committed to hard labour for eighteen months.

By the 9 *G. c.* 22. commonly called the black act, (the provisions of which are more fully set forth under that title). If any person shall set fire to any house, barn, or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood, he shall be guilty of felony without benefit of clergy.

And now by the 3 *W.* 4. § 11. it is enacted, that if any person shall set fire to any church or chapel, or to any building commonly used for religious worship, or to any house, stable, coach-house, out-house, ware-house, office, shop, mill, malt-house, barn or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively, shall then be in the *possession* of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person, or any body corporate, or company of persons, every such offender shall be guilty of felony, and shall suffer death: and accessories before the fact shall be punishable as principals.

Information against a person for burning a Barn.

Home District, } The information and complaint of A. B. of——
to wit. } in the said District, yeoman, taken on oath this —— day of —— in the year of our Lord one thousand eight hundred and thirty-four, before me J. P. Esq. one of his Majesty's justices of the peace in and for the said district. The said informant saith, that about the hour of three o'clock this morning he discovered that his barn adjoining to his dwelling-house, situate in the said township, was on fire, and that from the information he hath received he hath good cause to suspect, and doth verily suspect that the same was wilfully and feloniously set on fire by one C. D. of —— labourer, with intent thereby to injure this informant, wherefore he prayeth a warrant against the said C. D. and that he may be dealt with according to law.

Sworn, &c.

Warrant thereon.

To the Constable of —— in the Home District.

Home District, } Whereas A. B. of —— hath this day made com-
to wit. } plaint on oath, before me J. P. esq. one of his Majesty's justices of the peace for the said district, that &c. *(here state the offence as laid in the information).* These are therefore to command you forthwith to apprehend and bring before me, or some other of his Majesty's justices of the peace for the said district, the body of the said C. D. to answer unto the said charge and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the —— day of —— in the year of our Lord 1834.

For Commitment for further Examination—see post Justice of the Peace.

Warrant of Commitment for Trial.—(Archbold)

Home District, } J. P. Esquire, one of his Majesty's justices of
to wit. } the peace for the said district, to the constable of —— in the said district, and to the keeper of the common gaol at Toronto, in the said district.

These are to command you the said constable, in his Majesty's name, to convey and deliver into the custody of the keeper of the said common gaol, the body of C. D. charged this day before me the said justice, on the oath of A. B. of —— yeoman, for that he the said C. D. on or about the —— day of —— instant, unlawfully, maliciously and feloniously, did set fire to a certain barn, of him the said A. B. situate in the said township of —— with intent thereby then and there to injure the said A. B. against the form

of the statute in that case made and provided. And you the said keeper are hereby required to receive the said C. D. into your custody, in the same common gaol, and him there safely to keep, until he shall be thence delivered by due course of law. Herein fail you not. Given under my hand and seal, the—— day of—— in the year of our Lord ——

ARTICLES OF THE PEACE.

WHENEVER a person has just cause to fear that another will burn his house, or do him or his wife or children, a corporal hurt, or unlawfully imprison any of them, or that he will procure others to do so, he may exhibit *articles of the peace* against the person from whom he apprehends such mischief, either in the courts of chancery or king's bench, or before a justice of the peace; and such court or justice is bound to require the party to find sureties to keep the peace towards the exhibitant, upon the latter making oath that he is actually under such fear from the other person, and that he has just cause to be so, and that he does not require such surety out of malice or vexation. 1 *Haw. c.* 60. § 6. 7.

And all persons whatsoever under the king's protection, subjects or aliens, have a right to demand surety of the peace.

A wife may demand it against her husband, and a husband against his wife. *Ib.* § 2. 4.

Sureties of the peace may be required from any person whatsoever under the degree of nobility: but *infants*, and *married women*, ought to find security by their friends, and not to be bound themselves. *Ib.* § 5.

When the articles are exhibited before a *justice of the peace*, the party, if present, may be immediately committed, unless he offer sureties; but if he be absent, the justice cannot commit him for not finding security, until he has been required, and has refused to do so; and the warrant, in that case, must shew the cause for which it is granted, and at whose suit. 1 *Haw. c.* 60. § 9. *Rex. v. Wilks. Ibid.* (5.)

The proper course in such a case would be, for the justice to take the information, upon oath, of the party complaining, with a statement of the particular facts or menaces that induce the complainant to fear some injury to himself or property: upon which, the justice may issue his warrant for bringing the party before him; upon his being brought before him, he may then either bind him over with sufficient sureties to keep the peace, or to appear at the sessions. If bound over to appear at the sessions, he should also be bound to keep the peace, in the meantime, towards the party complaining: and this is the common form of the precedent. 1 *Haw. c.* 60. § 16. It is better, however, for justices to bind

over the parties to keep the peace a reasonable time, to be stipulated in the recognizance, rather than to appear at the sessions, where the offender would be obliged to find fresh security, without any new offence being alleged; and for non-appearance, his recognizance would be forfeited, except reasonable cause shewn, by sickness or otherwise; and this opinion is corroborated by a recent decision in the court of king's bench, which determines that a justice of the peace is authorised to take surety for the peace for a limited time, (e. g. two years) according to his discretion, and that he need not bind the party over to the next sessions. 2 *B. and A.* 278.

A warrant for the peace must be executed by the person only to whom it is directed, who is authorised to break open any door on being refused admittance and stating the cause of his coming. 2 *Haw. c.* 14. § 2.

If the warrant is special, the party must be carried before the justice granting it, and no other; but if general, the offender may be taken before any justice, and the officer may take him to prison on refusing to give sureties before such justice. 1 *Haw. c.* 60. § 13. If the accused, on being apprehended, refuse to obey the warrant, or to find sureties, the officer may, without further warrant convey him to gaol: but the warrant should so direct, otherwise it is prudent to bring him before the justice, by whom, on refusal to find sureties, he may be committed without further warrant. 2 *H. H.* 112. *Dalt. c.* 118.

An officer not doing his duty, may be indicted and fined at the sessions. *Dalt. c.* 118. If the sureties are insufficient, the justice may compel the party to find better. *C.* 116. 119. But if the sureties should die, the principal is not compellable to find others, their executors or administrators being liable.

The recognizance may be forfeited by doing any actual violence to the person of another, or causing it to be done by his instigation. *Dalt. c.* 121. A justifiable assault is no forfeiture. 1 *Haw. c.* 60. § 23. 24.

If the recognizance is made to keep the peace *generally*, it shall be deemed to be during the parties life; and as such recognizance cannot be discharged, it should not be so granted on slight grounds. *Dalt. c.* 119. 120. But it is discharged upon the death of the king, or of the principal. 1 *Haw. c.* 60. § 17. And it has been held that the recognizance may be discharged on the release of the complaining party. *Ib.*

If the recognizance is to keep the peace towards the king and all his subjects, the sessions may discharge it, unless on proclamation some person appears to demand sureties upon warrantable cause; but if it is made to keep the peace with a particular person,

the sessions will not discharge it, though the person requiring it do not appear; and the court may bind over the party to the next sessions. *Dalt. c.* 120.

If the party accused be in prison for want of sureties, on the death of the party demanding the peace, he shall be released, or if he offers sufficient surety while in prison. *Dalt. c.* 118.

See also, title—SURETY FOR GOOD BEHAVIOUR.

Information to require Surety of the Peace and good behaviour.
(TOONE.)

Home District, } The information and complaint of A. B. of ——
to wit: } taken on oath before me, J. C. Esq. one of his Majesty's justices of the peace in and for the said district, this —— day of —— 18—, who says, that C. D. of —— yeoman, did on the —— day of —— threaten to beat *(kill, maim, &c. as the fact may happen to be)* this complainant, and that from the above and other threats used by the said C. D. towards this complainant, he, this complainant, is afraid that the said C. D. will do him some bodily harm, and therefore prays that the said C. D. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him, this complainant. And the said A. B. also saith, that he doth not make this complaint against, nor require such sureties from the said C. D. from any malice or ill will, but merely for the preservation of his person from injury.

A. B.

Sworn before me.

Warrant thereon.

To the Constable of —— in the Home District.

Home District, } Forasmuch as A. B. of —— yeoman, hath per-
to wit. } sonally come before me, J. C. Esq. one of his Majesty's justices of the peace in and for the said District, and hath this day taken his corporal oath, that C. D. of —— yeoman, did on the —— day of —— at —— threaten to beat, &c. *(or as the case may be)* the said A. B. and that from the above and other threats used by the said C. D. towards the said A. B. he, the said A. B., is afraid that the said C. D. will do him some bodily harm, and hath therefore prayed of me, the said justice, security of the peace and good behaviour to be had or granted to him the said A. B. against the said C. D. These are, therefore, to require you, in the name of our said lord the King, immediately upon sight hereof, to bring the said C. D. before me, to find sufficient sure-

ties for his personal appearance at the next general quarter session of the peace to be holden in and for the said district, then and there to answer to the premises, and in the meantime that he, the said C. D. do keep the peace and be of the good behaviour towards our said lord the king and all his liege people, and especially towards the said A. B. Given under my hand and seal, at —— in the said district, the —— day of ——.

Condition of the Recognizance to appear at the Sessions.

The condition of this recognizance is such, that if the above bounden C. D. shall personally appear at the next general quarter sessions of the peace, to be holden in and for the Home District, and then and there answer to articles of the peace to be then and there exhibited against him by A. B. of —— and shall also do and receive what shall be then and there enjoined him by the court; and in the mean time shall keep the peace, and be of the good behaviour towards the King and all his liege people, and especially towards the said A. B. then the above recognizance to be void, or otherwise to remain in full force.

Condition of the Recognizance to keep the Peace, &c. without appearance at the Sessions.

The condition of the above recognizance is such that the above bounden C. D. shall keep the peace, and be of the good behaviour towards the King and all his liege people, and especially towards A. B. of —— for the space of one year, *(or longer if need be)* then this recognizance to be void, or else to remain in full force.

Commitment for want of Sureties.

To the Constable of—— and to the Keeper of the Gaol at Toronto, in the said Home District.

Home District, } Whereas C. D. of —— in the said district, yeo-
to wit. } man, is now brought before me J. C. Esquire, one of his Majest'y justices of the peace in and for the said district, and is by me required to find sufficient sureties to be bound with him in a recognizance for his personal appearance at the next general quarter sessions of the peace, to be holden in and for the said district, and in the mean time to keep the peace and be of the good behaviour towards the king and all his liege people, and especially towards C. D. of —— in the said district yeoman, and whereas he the said C. D. hath refused * and doth now refuse before me to find such sureties. These are therefore in the name of our said

* A neglect or inability to find sureties is the same as a *refusal* at law.

lord the King, to command you the said constable forthwith to convey the said C. D. to the common gaol of our said lord the King at Toronto in the said district, and to deliver him to the keeper thereof there together with this precept, and I do in the name of our said lord the King, hereby command you the said keeper to receive the said C. D. into your custody in the said gaol, and him there safely to keep until he shall find such sureties as aforesaid or be otherwise discharged in due course of law. Given under my hand and seal the —— day of —— in the year of our lord 18—

The form of a supersedeas to be used where the defendant finds surety before the warrant is executed upon him.

J. C. Esquire, one of the justices of our lord the King, assigned to keep the peace within the home district, to the sheriff of the said district, and to the constables and others, the faithful ministers and subjects of our said lord the King within the said district, and to every of them, greeting.

Home District, } Forasmuch as C. D. of —— in the said district,
to wit. } yeoman, hath personally come before me at —— in the said district and hath found sufficient surety, that is to say, E. F. of —— yeoman, and E. H. of —— yeoman, either of whom hath undertaken for the said C. D. under the pain of £20, and he, the said C. D. hath undertaken for himself under the pain of £40, that he, the said C. D. shall personally appear at the next general quarter sessions of the peace, to be holden in and for the said district, then and there to answer to articles of the peace to be exhibited againt him by A. B. of —— yeoman, and to do and receive what shall be then and there enjoined him by the court, and in the mean time to keep the peace and be of the good behaviour towards the King and all his liege people, and especially towards the said A. B. Therefore on behalf of our said lord the King, I do command you and every of you, that you utterly forbear and do cease to arrest, take, imprison, or otherwise by any means for the said cause, to molest the said C. D. and if you have for the said occasion and for none other taken and imprisoned him the said C. D., that then him you deliver or cause to be delivered and set at liberty without further delay. Given under my hand and seal this —— day of —— &c.

Release of the Surety for the Peace, &c.

Home District, } Be it remembered, that A. B. of —— in the
to wit: } said district, yeoman, on the —— day of —— in the —— year of the reign of our sovereign lord William the fourth, came before me J. C. Esq. one of the justices of our said

lord the King assigned to keep the peace within the said district, and there remised and freely released to C. D. of —— in the said district, yeoman, the surety of the peace and good behaviour by him the said A. B. before me prayed against the said C. D.

Given under my hand and seal, the —— day of —— in the year of our Lord 18—. J. C.

Or, if it is before another Justice, then say—

The surety of the peace and good behaviour which he has against C. D. of —— in the said district, yeoman. Given, &c.

Discharge of one committed for want of Sureties.

J. C. Esq. one of the justices of our lord the King assigned to keep the peace in the home district, to the keeper of his Majesty's gaol at Toronto, in the said district—GREETING:

Home District, to wit. } Forasmuch as C. D. in the prison of our said lord the King, in your custody now being, at the suit of A. B. of —— in the said district, yeoman, for the want of his finding sufficient sureties, &c. *(as in the former precedents of a supersedeas.)* Therefore, on the behalf of our said lord the King, I do command you, that if the said C. D. do remain in the said gaol for the said cause, and none other, then you forbear to grieve or detain him any longer, but that you deliver him thence and suffer him to go at large, and that upon the pain which will fall thereon. Given under my hand and seal, this —— day of —— 18—. J. C.

Form of Articles of the Peace.

Home District, to wit. } C. D. wife of E. D. of —— in the said district, labourer, prays surety of the peace against the said E. D. her said husband, for fear of death or bodily injury.

First—This informant on her oath, saith that she intermarried with her said husband about —— years ago, since which time he hath often in a cruel, barbarous, and inhuman manner, beat, abused and ill treated this informant, and frequently threatened to take away her life.

Secondly—This informant saith that on the —— day of —— last past, her said husband in a violent passion, *(state the particular acts of cruelty.)*

Lastly—This informant saith, that she is actually afraid her said husband will do her some bodily injury, if not murder her, should she return home again to him; and saith that she doth not

make this complaint against her said husband out of any hatred, malice, or ill-will which she hath or beareth towards him, but purely for the preservation of her life and person from further danger.

Articles of the peace should have the signature of counsel.

ASSAULT AND BATTERY.

AN assault is a forcible attempt to do a corporal injury to another; a blow, however trifling, is a battery; every assault, however, is not a battery; but every battery necessarily includes an assault.—1 *Haw. P. C.* 263. So striking at another, or even holding up a fist in a menacing manner, will amount to an assault.—1 *Haw. C.* 62.

An unlawful imprisonment is also an assault in law.—1 *Haw. C.* 60.

An assault in some instances may be justified: Thus a party may justify an assault, *molliter manus imposuit*, in defence of his goods, his wife, father, mother or child, and a wife in defence of her husband.—1 *Ld. Ray.* 62.

A servant may also justify an assault in defence of his master; but doubtful whether a master may do so in defence of his servant. 1 *Salk.* 407.

So also may a master reasonably correct his apprentice or servant; and a master his scholar: but immoderate correction, or with an unlawful instrument, will constitute an assault.—3 *Salk.* 47.

A common assault is punishable as a misdemeanor; and the punishment usually inflicted is fine, imprisonment, and the finding of sureties.—4 *Bl. Com.* 217.

And by the summary punishment act 4 *Wm.* 4. *c.* 4. § 1. one justice may hear and determine the offence, and fine the offender in a sum not exceeding £5—*(see further summary punishment.)*

Aggravated Assaults

Are such as are committed by persons with intent to commit felony or some other illegal act; assaulting a magistrate or constable in the execution of his duty; or a servant his master; and the like.

And any servant assaulting his master or mistress, may, upon conviction before *two* justices, and upon the oath of two witnesses, be imprisoned for a year, or less. 5 *Eliz. c.* 4. § 21.

Also, any person assaulting or challenging another for money won by gaming, shall forfeit to the King all his goods, and be imprisoned two years. 9 *Ann, c.* 14. § 8.

Affidavit to ground a Warrant for an Assault.

Home District, } A. B. of ——— yeoman, maketh oath and saith,
to wit. } that on the ——— day of ——— instant, at ———

in the township of ——— C. D. of ——— labourer, did violently assault and beat this opponent, by striking him with his fist several blows on the head, face, and other parts of his body; without any just or legal provocation.

Sworn, &c. A. B.

Warrant for an Assault.

Home District. To the Constable of ———

Whereas complaint hath been made before me, J. P. Esq. one of his Majesty's justices of the peace in and for the said district, upon the oath of A. I. of ——— in the said district, tailor, that A. O. of ——— aforesaid, butcher, did on the ——— day of ——— violently assault and beat him the said A. I. at ——— aforesaid, in the district aforesaid. These are therefore in his Majesty's name to command you forthwith to apprehend the said A. O. and to bring him before me, to answer unto the said complaint and to be further dealt with according to Law. Given under my hand and seal the ——— day of ——— 18—.

Recognizance, (in the usual form).

The condition of this Recognizance is such, that if the above bounden A. O. shall and do appear at the next general quarter sessions of the peace to be holden in and for the said district, and then and there answer to a bill of indictment to be preferred against him, for an assault on one A. I. and shall not depart the court without leave, then this recognizance to be void.

Taken and acknowledged, &c.

Commitment for an Assault, for want of Sureties.

To E. F. Constable of ———, and to the keeper of the common Gaol in the said District.

Home District, } Whereas C. D. was this day brought before me,
to wit. } S. P. Esq. one of his Majesty's justices of the peace in and for the said district, and charged on the oath of A. B. with assaulting and beating him the said A. B. And whereas the said C. D. hath refused, (or neglected) although by me required, and doth refuse (or neglect) to find good and sufficient sureties, as well for his personal appearance at the next general quarter sessions of the peace to be held in and for the said district, to answer to an indictment to be then and there preferred against him for the said assault, as also in the meantime to keep the peace towards the said A. B. and all his Majesty's liege subjects.— These are, therefore, in his Majesty's name, to command you,

the said constable, safely to convey the said C. D. and deliver him to the keeper aforesaid, together with this warrant; and you the said keeper, are hereby required to receive into your custody in the said gaol the body of the said C. D. and him there safely keep until he shall find such sureties, or otherwise shall be discharged by due course of law. Given under my hand and seal, &c.

Indictment for a Common Assault.

Home District, } The Jurors for our Lord the King upon their
to wit. } oath, present, that A. O. late of the township of ——— in the county of ——— in the Home district, butcher, on the —— day of ——— in the —— year of the reign of our Sovereign Lord William the fourth, with force and arms, at the township aforesaid, in the county and district aforesaid, in and upon one A. I. in the peace of God and our said Lord the King, then and there being, did make an assault, and him the said A. I. then and there did beat, wound and ill treat, and other wrongs to the said A. I. then and there did, to the great damage of the said A. I. and against the peace of our said Lord the King, his crown and dignity.

Indictment for an Aggravated Assault.—(Archbold.)

(Commencement as before) in and upon one I. N. in the peace of God and our Lord the King, then and there being, did make an assault, and him the said I. N. then and there did beat, wound and ill treat, and that the said J. S. with both his hands, then and there violently cast, flung and threw the said I. N. to, upon and against a certain brick floor there, and him the said I. N. in and upon his head, neck, breast, back, sides and other parts of his body, with both the feet of him the said J. S. then and there violently and grievously did kick, strike and beat, giving to the said I. N. then and there, as well by such flinging, casting and throwing of him the said I. N. as also by such kicking, striking and beating of the said I. N. as aforesaid, in and upon the head, neck, breasts, sides, back and other parts of the body of him the said I. N. divers bruises, hurts and wounds, so that his life was greatly despaired of, and other wrongs &c. (as before).

For Assaulting a Constable in the execution of his Office.

(Commencement as before) in and upon I. N. (then being one of the constables of the said township of —— in the district aforesaid, and in the due execution of his said office, then and there being) did make an assault, and him the said I. N. so being in the due

execution of his said office as aforesaid, then and there did beat wound and ill treat, and other wrongs, &c. (as before). *Add a count for a common assault. From this precedent an indictment may readily be framed for an assault upon any other public officer in the execution of his office. Arch.*

MEMBERS OF ASSEMBLY.

By the 43 *G.* 3. *c.* 11. after every prorogation and dissolution of the assembly, every member having attended is entitled to receive from the Speaker, a warrant signifying the time of such members attendance, and every member holding such warrant may demand of the justices of the district in which the county &c. represented by such member shall be, in their general quarter sessions, a sum not exceeding ten shillings a day, for every days attendance and absence from his place of abode, in going to or returning from his attendance, which sum it shall be lawful for the justices to levy by assessment, to be made on each and every inhabitant householder in the several parishes, townships, reputed townships, or places within the county or riding represented by such member, in the same manner and form as any assessment may now or hereafter be levied for any public purpose.

ASSESSMENTS.

By statute 59 *G.* 3. c. 7. entitled "an act to repeal the several laws now in force relative to levying and collecting rates and assessments in this Province, and further to provide for the more equal and general assessment of lands and other rateable property throughout this Province, certain acts, viz.: the 51 *G.* 3. *c.* 8. and the 55 *G.* 3. *c.* 5. are repealed.

By § 2. the following property is declared rateable, at the rate and valuation set forth after the first Monday in January, 1820.

	£	*s.*	*d.*
For every acre of arable pasture or meadow land,.....	0	20	0
" every acre of uncultivated land,.....	0	4	0
" every town lot situated in the towns of York, Kingston, Niagara and Queenston,.....	50	0	0
" Cornwall, Sandwich, Johnstown and Belleville,.....	25	0	0
" every town lot on which a dwelling-house is erected in Brockville, being composed of the front half of lots Nos. 10, 11, 12 and 13, in first concession of the township of Elizabethtown, in the district of Johnstown,..	30	0	0

	£	s.	d.
For every town lot on which a dwelling-house is erected in the town of Bath, being composed of the front or south half of lots 9, 10, 11, in the first concession of Ernestown, Midland District,	20	0	0
" every house built with timber squared or hewed on two sides, of one story heighth, and not two stories, with not more than two fire-places,	20	0	0
" every additional fire-place,	4	0	0
" every dwelling-house built of squared or flatted timber on two sides, of two stories in heighth, with not more than two fire-places,	30	0	0
" every additional fire-place,	8	0	0
" every framed house under two stories in heighth, with not more than two fire-places,	35	0	0
" every additional fire-place,	5	0	0
" every brick or stone house of one story heighth, and not more than two fire-places,	40	0	0
" every additional fire-place,	10	0	0
" every framed, brick or stone house, of two stories heighth, and not more than two fire-places,	60	0	0
" every additional fire-place,	10	0	0
" every Grist-mill wrought by water, with one pair of stones,	150	0	0
" every additional pair,	50	0	0
" every Saw-mill,	100	0	0
" every Merchant's shop,	200	0	0
" every Store-house owned or occupied for the receiving and forwarding goods, wares, or merchandize, for hire or gain,	200	0	0
" every Stonehorse kept for covering mares, for hire or gain,	100	0	0
" every horse of three years age and upwards,	8	0	0
" oxen of the age of four years and upwards, per head,	4	0	0
" milch cows, per head,	3	0	0
" horned cattle, from two to four years of age,	1	0	0
" every close carriage kept for pleasure, with four wheels,	100	0	0
" every phaeton, or other open carriage, with four wheels, kept for pleasure only,	25	0	0
" every curricle, gig, or other carriage, with two wheels, kept for pleasure only,	20	0	0
" every waggon kept for pleasure,	15	0	0
Every stove kept in a room where there is no fire-place shall be deemed a fire-place.			

Sec. 3. The assessors in each township shall demand and take lists of rateable property from every inhabitant, between the first monday in February and the next general quarter sessions, and

insert their own rateable property therein, and return the same to the clerk of the peace, to be laid before the sessions, after putting a copy thereof in some public place in the township. § 4. Lands in fee simple, or held by land board certificate, order in council, or certificate of any Governor, or by lease, shall be rateable property. § 5. Each lot of land in the before recited towns, other or less than a town lot, held by lease or otherwise, on which a dwelling-house shall be erected, shall be considered a town lot. § 6. The assessors shall be entitled to receive from the treasurer of the district, 4 per cent. upon the sum raised, for their trouble. § 7. The quarter sessions having ascertained the sum required to defray the public expenses of the district, shall divide and apportion the same according to the rateable property of each person, and direct the clerk of the peace to transmit a copy of the assessment roll to each collector in the district, the sum levied not to exceed *one penny* in the pound, per annum. § 8. No new assessment shall be made till it shall appear to the sessions that one-half of the money collected by virtue of the preceding rate, and the whole collected under any act then or thereafter to be in force, shall be expended. § 9. imposes a penalty of not less than two pounds, nor more than five pounds, upon officers neglecting their duty, or persons neglecting to deliver true lists of rateable property, for the first offence, and ten pounds for the second, to be levied by distress and sale. § 10. In case of refusal to pay any rate, within fourteen days after demand, the same may be levied by distress and sale, by warrant from one justice. § 11. authorises the collector to deduct a compensation of five per cent. from the amount collected. § 12. Schedules of granted and leased lands shall be furnished annually by the Surveyor General, to the District Treasurer, on or before the first day of July. § 13. All lands described in the schedule as granted or leased, shall be liable to assessment, whether occupied or not, and the collector having a warrant for this purpose, may enter upon late unoccupied lands and take any distress found thereon, and sell the same, as if the rate had been due by the then occupier. § 14. The treasurer of each district shall keep separate accounts for each township, and leave the same open to inspection, between the hours of ten and three, on the first Monday in every month, and take one shilling and three pence for such inspection, and no more. § 15. If the rates upon any lot shall be in arrear three years, the rates so in arrear shall be increased *one-third;* if in arrear for five years then *one-half;* and if for eight years then *doubled;* and the said rates shall be thenceforward charged in double the amount. § 16. Townships not authorised to hold town meetings, shall be assessed with the township adjacent. § 17. An aggregate account shall

be transmitted by the Clerk of the Peace to the Lieutenant Governor. § 18. The Treasurer of the district (appointed by the general quarter sessions) shall furnish sufficient security, and may retain four per cent. upon the amount in his hands. § 19. The Treasurer's accounts shall be rendered upon oath, at the respective general quarter sessions, and a certified copy transmitted to the Governor. § 20. The Treasurer shall be removable by the sessions at their pleasure. § 21. The following fees and no more, may be taken under this act;—for warrant of distress, two shillings and six pence; milage four pence; selling and making return two shillings. § 23. The sum of twenty shillings to be paid to the Surveyor General for every schedule for each township, furnished by him, on or before the 1st day of July, 1820, and for every supplementary schedule afterwards, the sum of two shillings and six pence, to be paid by the Receiver General. § 23. 24. Limiting the continuance of this act, and giving the form of assessment roll, are both repealed by the next statute.

By Stat. 6 *G.* 4. *c.* 7. § 1. Reciting that it was expedient to make perpetual the 59 *G.* 3. except such parts thereof as are hereby repealed, and to render more certain the due collection of such rates and assessments, by providing for levying assessments in arrear, it is enacted, that the 23rd sec. of the above act should be repealed. § 2. The grantee, owner, or occupier of any township block or parcel of land, or any parcel thereof, not surveyed by or under the authority of the Surveyor General, should, on or before the 1st day of July next, return to the treasurer of the district, a schedule of such lands, or so much as had been surveyed, designating same by numbers and concessions, or otherwise, according to any plan or map thereof, upon pain of forfeiting double the amount of assessment, yearly, until such return should be made. § 4. Such penalties to be recovered before three justices, and levied by warrant of two justices, one half to the informer, and the remainder to the treasurer of the district, to be applied in the same manner as the assessments. § 5. And whenever any such schedule shall be returned, the treasurer shall enter the same in his books, in like manner as if the same had been returned by the Surveyor General; and all the provisions of this act relative to the collection of rates and assessments, arrears and penalties, shall apply to lands so returned. § 6. The Treasurers of districts shall report to the general quarter sessions, all lands upon which the assessments shall be eight years in arrear, after the first of July, 1828. (This clause has been repealed by the 9 *G.* 4. *c.* 3. § 9.) § 7. Upon such accounts being so made, the clerk of the peace shall issue a writ for levying the assessments in arrear, directed to the Sheriff, by sale of a portion of the lands upon which the assessments are chargeable, if no

distress be found thereon. § 8. Such writs shall be returnable at the third quarter sessions after issuing the same. § 9. The lands liable to sale shall be advertised by the treasurer, in the Upper Canada Gazette, and in some newspaper within the district, within one month after rendering his account. § 10. Within one month after receipt of the writ, the sheriff shall advertise the lands in the U. C. Gazette, and in all the newspapers in his district, and the time and place of sale. § 11. No sale shall be made in less than six months from the delivery of the writ to the sheriff, nor out of the township, unless thinly inhabited, and then in the township to which it may be annexed. § 12. The lands shall be sold by public auction, as follows:—The assessment in arrear shall be declared with the expenses of the writ; and the person who shall offer to pay the same for the least quantity or portion of the lands, shall be considered the purchaser thereof. § 13. The sheriff shall begin the sale at the front angle on that side from whence the lots are numbered, and measure backward, taking a proportion of the width corresponding in quantity with the proportion of such lot in regard to its length and breadth, according to the quantity required to make the sum demanded; and at every subsequent sale of a portion of the same lot, shall take a tract of equal width as the former, measuring backward from the limit of the lot last sold. § 14. In every case where, from the position of the tract, the mode last mentioned cannot be pursued, then the sheriff may sell such portions of land as shall appear to him most for the interest of the proprietor. § 15. No greater interest in the crown or clergy reserves shall be sold than is possessed by the lessees. § 16. The sheriff may adjourn the sales at his discretion, and re-sell the lands not paid for. § 17. Purchasers may be let into possession on payment of assessment dues, but owners may resume their lands within twelve months after sale, upon repayment of taxes, costs, and 20 per cent. in addition to the purchaser. § 18. And if land not redeemed within the twelve months, the sheriff may execute a conveyance in fee simple to the purchaser, according to the form marked B. in the schedule. § 19. Before conveyance executed, the sheriff shall register a certificate of such sale, in lieu of any memorial. § 20. Conveyances may be registered, on payment of 2s. 6d. and no more. § 21. Treasurers neglecting to make returns for two sessions, shall, on conviction at the assizes, forfeit their office, and justices may appoint another forthwith; and upon neglect of the justices, the Governor may appoint one during pleasure. § 22. Sales not to be avoided for any neglect in form, but the party grieved shall have his remedy by action. § 23. Monies received by the sheriff shall be paid to the treasurers. § 24. A compensation of £5 shall be allowed to the treasurer for every account furnished under this act. § 25. 10s. to the clerk

of the peace for each writ. § 26. The sheriff may charge and levy a fee of 7s. 6d. upon every sale, and retain 3 per cent. on the sales. § 27. The treasurers shall give receipts for taxes paid.

By Stat. 9 *G.* 4. *c.* 3 § 1. any person holding lands not returned upon the assessment roll of the township where he resides, may pay to the treasurer of the district in which he resides the rates due on such lands, with a compensation of £5 per cent. to the treasurer. § 2. Accounts shall be kept by the treasurers, and copies verified by oath, shall be transmitted annually, on the first of July, to the treasurers of the districts in which the lands lie, who shall at the same time transmit the amount received. § 3. The treasurer receiving such assessments shall credit the respective lots, and transmit receipts to the treasurer transmitting the amount. § 4. No greater accumulation than 50 per cent. shall be charged upon any lands on which assessments shall be paid on or before the 1st July, 1829; and in all cases hereafter, fifty per cent. and no more shall be charged in addition, where the assessments shall remain in arrear longer than four years. § 5. Arrears of assessments paid by the first day of July 1829, shall be liable only to an increase of fifty per cent. on the amount due for the first five years. § 6. Treasurers shall not after the 1st July, 1829, receive taxes on lands in other districts, if they have been suffered to run in arrear for more than six years; in such case the assessments must be paid in the districts in which the lands lie. § 7. No partial payment shall be received, when more than eight years assessments are due. § 8. imposes a penalty of £50. upon the neglect or omission of any treasurer in his duty, to be recovered before the sessions, on the oath of one or more witnesses; one half to the informer; the other to the public accounts; and the justices in session shall examine the accounts required to be kept under this Act, and ascertain whether the same have been transmitted, together with the monies, to the several district treasurers. § 9. repeals the 6. § of the 6 *G.* 4. *c.* 7. and enacts, that the duties therein prescribed and required to be done by the several treasurers, shall be performed by them at or before the general quarter sessions next after the 1st day of July, annually, and the clerk of the peace shall proceed thereon in manner pointed out by the seventh clause of said act. § 10. In case of the erroneous description of any lot the owner may make oath before any one justice that the sum paid was for such lot and concession, specifying the same, to enable the treasurer to credit the same, § 11. And when from death or other causes, such affidavit cannot be made, justices in sessions are empowered to hear and determine upon such evidence as may be adduced, and if in favor of the plaintiff, to order the treasurer to credit the lot accordingly.

Form of Assessment for the Township of —— for the year ——. § 6 G. 4. c. 7

| A. | B. | C. | D. | NAMES. | | |

Form of Writ to Sell. 6 *G.* 4. *c.* 7.

A.

District, of——— } To the Sheriff of the District of
———

Whereas, by the account rendered by the treasurer of the said district of ——— to the justices of the peace, for the said district, in general quarter sessions assembled, according to the act of parliament of this province, passed in the sixth year of the reign of his majesty King George the fourth, entitled, (here insert the title of this act,) it appears that the assessments or some part thereof which are imposed upon lands by the several statutes of this province, have been suffered to remain in arrear beyond the space of eight years, upon the lots or parcels of land hereinafter mentioned, and that the said lots or parcels of land stand respectively charged with the sums herein set forth, that is to say, (here state the lots or parcels of land with the sum charged against the same, in the treasurer's accounts so remaining in arrear, up to the expiration of the last year before such account was rendered.) These are therefore, in his majesty's name, to command you to levy the several sums of money herein mentioned, by sale of such portion of the lands on which the said assessments are respectively charged, as may be sufficient for that purpose, together with the fees allowed by the said act, passed in the fourth year of the reign of King George the fourth, to be levied on this writ, duly observing the directions of the said last mentioned act, in respect of such sale, provided there be no distress upon the said lands respectively, from which the said several sums, or either of them, may be made.—And if there be such distress then that you levy the same by such distress, together with such fees as aforesaid, rendering the overplus, if any there be, to the owner thereof. And whatever monies you shall levy by virtue of this writ, have before the court of general quarter sessions of the peace, in and for the said ——— district, which shall begin and beholden on the ——— day of ——— next, together with this writ.

Form of Sheriff's Deed. 6 *G.* 4. *c.* 7.

B.

These are to witness that in consideration of the sum of ——— paid to me by A. B. of ——— being the purchaser at public auction of the parcel or tract of land hereinafter mentioned, sold to pay assessments, under a writ to me directed, according to the law in that behalf, I, C. D. Sheriff of the district of ——— do, by these presents, grant, bargain, and sell, unto the said A. B. his heirs

and assigns, (describe the parcel of land sold,) to have and to hold the premises hereby bargained and sold, and all benefit and advantage thereto belonging, unto, and to the use of the said A. B. his heirs and assigns for ever.—In witness whereof, I have hereto set my hand and seal of office, this —— day of —— in the year of our Lord ——

ASSESSORS.

By 33 *G.* 3. *c.* 1. § 3. two Assessors shall be chosen by the inhabitant householders, at their annual town meetings, who shall assess all such rates and taxes as shall be imposed by any act or acts of the Legislature. § 8. The constable presiding at such meeting shall communicate a list of the town officers to one of the justices who signed the warrant for the town meeting, and who may administer to the persons so chosen the following oath of office.

You, A. B. do promise and swear, that you will faithfully, diligently, and justly serve and perform the office and duties of —— for —— according to the best of your abilities. So help you God.

And any person so chosen refusing to take the oath for seven days after such nomination, shall forfeit 40s. § 9.

By the 59 *G.* 3. *c.* 7. the duties of the assessors are further defined; (See– *ante Assessment*) and by § 6. the assessors are entitled to receive from the treasurer, £4. per cent. upon their respective collections. See also, post "*Town Officers*," for recovery of penalties against town officers.

ASSIZES.

By the 2 *G.* 4. *c.* 1. § 27. it is enacted, that it shall be lawful for the Lieutenant Governor, &c. to issue yearly, in the vacation between the michaelmas and trinity terms, such commissions of assize and nisi prius into the several districts, as may be necessary for the purpose of trying all issues joined in the said court, in any suit or action arising in the several districts of this province; and that when a suitable communication by land shall be opened from the city, town or place, which shall be the seat of government, into the respective districts, and the circumstances of the province may require it, it shall be lawful for the Lieutenant Governor likewise, to issue yearly, in the vacation between the hilary and easter terms, such commissions of assize and nisi prius, into each of the several districts, for the trial of all issues joined as aforesaid.

Sec. 28. And nothing in this act contained shall be construed to prevent the issuing a special commission or commissions for the trial of offenders upon extraordinary occasions.

Sec. 31. The Sheriffs of the several districts are required to make return of all writs of nisi prius, which shall be delivered to them or their sufficient deputy, before the chief justice, and every other judge assigned to execute such commissions, and shall give their attendance upon such judges, as well for the returning of such *tales de circumstantibus*, as shall be prayed for the trial of such issues, as for the maintenance of good order in the King's court, and for the doing and executing all other things to the office of sheriff appertaining.

ATTAINDER.

An *Attainder* is the *stain* or *corruption of the blood* of a criminal capitally condemned, and is the immediate and inseparable consequence, by the common law, of pronouncing sentence of death against him, he being then called *attaint attinctus*—that is, stained, or blackened. 4 *Bl. Com.*

A person *attainted* is no longer of any credit or reputation; he cannot be a witness in any court, neither is he capable of performing the functions of another man; for, by a sort of anticipation of his punishment, he is already dead in law. 3 *Inst.* 213. 4 *Bl. Com.* 380. Indeed, it was formerly holden, that any one might as lawfully kill a person attainted of treason or felony, as a wolf or other wild beast; though now, a malicious killing of any such person, there is no doubt, would be murder. 1 *Haw. c.* 28. § 8. *Ibid. c.* 31. § 15.

The attainder commences upon the judgment of death, or judgment of outlawry on a capital crime. 4 *Bl. Com.* 380.

But attainder does not follow until *after* judgment. *Ibd.*

The immediate consequences of attainder were the forfeiture of all the real and personal estates of the party attainted, and the corruption of his blood both upwards and downwards; so that an attainted person could neither inherit lands from his ancestors, nor retain those he was already in possession of, nor transmit them by descent to any heir.

By an attainder for *high treason*, a man forfeits to the King al his lands, &c. 26 *H.* 8. *c.* 13. 33 *H.* 8. *c.* 20.; *and see* 4 *Bl. Com.*

This forfeiture relates back to the time of the treason committed, so as to avoid all intermediate acts. A wife's dower is expressly forfeited by 5 & 6 *Edw.* 6.

By 7 *Ann*, *c.* 21. it was enacted, that after the death of the then pretender, no attainder for *high treason* should extend to the disinheriting of any heir, nor to the prejudice of any person other than the traitor himself: by which, says *Blackstone*, the law of *forfeitures* for high treason would by this time have been at an end, had not a subsequent statute (17 *G.* 2. *c.* 39.) intervened to give them a longer duration. By this statute, the operation of the statute of *Ann* was still further suspended, till the death of the sons of the pretender. 4 *Bl. Com.* 384.

In a certain kind of treason, however, namely—that relating to the coin, it is provided by the 5 *Eliz. c.* 11. and 18 *Eliz. c.* 1. that it shall work no forfeiture of lands, save only for the life of the offender, and that it should not deprive the wife of her dower. *See* 8 & 9 *W.* 3. *c.* 26. *and* 15 & 16 *G.* 2. *c.* 28.

In *petit treason*, and *felony*, the offender forfeits to the King all his chattel interests absolutely; and the profits of all estates of freehold during life; and after his death, all his lands and tenements in fee simple, (but not those in tail) for the space of a year and a day. 2 *Inst.* 37. 4 *Bl.* 385.

The forfeiture relates back to the time of the offence committed, so as to avoid all intermediate acts. 4 *Bl. Com.* 385. 2 *Haw. c.* 49. § 17.

Lands are only forfeited upon *attainder*, but goods and chattels upon *conviction*. The forfeiture of goods has no relation backwards; nose only which a man has at the time of his conviction, are actually forfeited. Therefore, a traitor or felon may, *bona fide*, sell any of his chattels, real or personal, for the sustenance of himself and family, previous to *conviction:* but not if they be collusively, and not *bona fide* parted with, and the object of the transfer be merely to defraud the crown. 13 *Eliz. c.* 5. 3 *Inst.* 232. 2 *Haw. c.* 49. § 33. 4 *Bl. Com.* 388.

By 3 *W.* 4. *c.* 5. entitled "an act to take away corruption of blood in certain cases," it is enacted, that no attainder for felony, after the passing of this Act, except in case of high treason, or of abetting, procuring, or counselling the same, shall extend to the disinheriting of any heir, nor to the prejudice of the right or title of any person other than the offender, during his or her life only; and it shall be lawful for any person to whom the right in any lands or tenements, after the death of such offender, would have appertained if no such attainder had been, to enter into the same.

AUCTIONS.

By 58 *G.* 3. *c.* 6. every auctioneer shall take out a license; and by § 2. pay for the same, annually, £5. By § 4. any person

neglecting to take out such license on or before the 5th January in every year, and continuing to exercise the trade of an auctioneer, or who shall neglect to exhibit in a conspicuous manner at his auction room his name and trade as such auctioneer, shall, upon the oath of one or more witnesses, other than the informer, for each and every offence forfeit and pay £20, to be recovered before any *three* justices, to be levied by distress and sale, with reasonable costs; and in default, commitment to the common gaol of the district, for any time not exceeding six months. § 9. One moiety shall go to the province, and the other to the informer. § 12. Actions must be commenced within six months. § 13. This act continued in force four years, and to the end of the next session, and was continued by 4 *G.* 4. *c.* 17. and further continued for four years by 9 *G.* 4. *c.* 10. and re-continued for four years by the 4 *W.* 4. *c.* 41.

For the forms of proceeding to recover penalties under this act, see "information," "summons," and "conviction."

AUTREFOIS ACQUIT.

THE plea of *Autrefois Acquit*, is a plea by a criminal, that he was heretofore quitted of the same treason or felony; and is grounded upon an universal maxim of the common law of England, that no man shall be brought into jeopardy of his life twice for the same offence. 2 *Inst.* 213. 4 *Co.* 49. 2 *Haw.* c. 35. § 1.

The whole of the record of acquittal must be set forth in the plea, in order that the court may see whether the prisoner was *legitimo modo acquietatus*. *R. v. Wildey*, 1. *M.* & *S.* 183.

The plea must plainly show that the party was lawfully acquitted by *verdict*; for if no bill was preferred against the prisoner, or even no true bill found by the grand jury, so that at the end of the sessions he is quit by proclamation and discharged, he may still be afterwards indicted; for this amounts to no acquittal. 2 *Hale*, 246.

But if an erroneous judgment be reversed by writ of error, the party may, in that case, be indicted *de novo*. 2 *Hale*, 247.

And if the party be acquitted from any insufficiency in the indictment, such an acquittal is in general not pleadable upon a second indictment, because the prisoner's life in this instance, was never placed in jeopardy, and therefore the reason for the plea entirely fails. 2 *Hale*, 248. 4 *Co.* 44. 45. 1 *Star.* 302. *Rex. v. Reading*, 2 *Leach*, 593. *per Buller, J.*

But then the insufficiency of the indictment should appear in the record of the judgment of acquittal. 2 *Hale*, 395.

When the Defendant has been tried by a *foreign tribunal* of competent jurisdiction, it seems clear, that an acquittal before such

tribunal will equally enure to his defence in this country; but, in this case, he should produce an exemplification of the record of his acquittal, under the public seal of that state or kingdom where he has been tried and acquitted. *Hutchinson's case*, 3 *Kes.* 785. *Beak v. Thyrwhit*, 3 *Mod.* 194. 1 *Shore* 6. *Bull N. P.* 245.

The identity of the party must be shewn by averment in the plea, that he was the same person charged in the former indictment. And though he be described differently in the two indictments—as, if in the first he be styled *yeoman*, and in the second *gentleman*, yet he may aver that he only was the person meant under each addition. 2 *Haw. c.* 35. § 3.

The *identity of the offence* must appear as well *in law* as *in fact*. 1 *Star.* 304.

Thus, an acquittal on an indictment for *felony*, is no bar to an indictment for a misdemeanor. 2 *Haw. c.* 35. § 5.

And an acquittal as *accessary after the fact*, cannot be pleaded to a subsequent indictment as *principal;* and the same è converso. 2 *Hale*, 244. *Fost.* 361. *Staundf.* 105.

If a man be acquitted generally upon an indictment for *murder*, *autrefois acquit* is a good plea to an indictment for *manslaughter* of the same person; and è converso, if he be indicted of *manslaughter* and acquitted, he shall not be afterwards indicted for the same death as *murder*. 4 *Co. Rep.* 46. 6. *Holcroft's case*, 2 *Hale* 246. *Fost.* 329. 1 *Star.* 305.

But if A. commit a *burglary*, and at the same time steal *goods* out of the house, and he be indicted for the *larceny only*, and acquitted, he may still be indicted for the *burglary*. 2 *Hale* 245.

And so *e converso*, (Ld. Hale says) if he be indicted for the *burglary* and acquitted, he may still be afterwards indicted of *larceny*. *Ib.* 246.

But the converse of this proposition must be received with this limitation, viz.—that the indictment for the burglary lay the offence only with an *intent to steal*, and not with an *actual larceny;* for, if laid with an actual larceny, a general acquittal would of course include an acquittal of the larceny itself. 1 *Star.* 309.

If A. commit a *robbery* in the county of B. and carry the goods into the county of C. and be there indicted for *larceny* only, an acquittal upon such an indictment, is no bar to an indictment for the *robbery* in the county of B. 2 *Hale* 245. 246.

For the same reason, if an indictment for *murder* is brought in an *improper county*, an acquittal upon such indictment cannot be pleaded to a subsequent indictment in the proper county. 2 *Haw. c.* 35. § 3. *Contra. Staundf.* 105.

But if a man steal goods in one county and carry them into another—as he may be indicted for the larceny in either county—

it seems, that an acquittal in one county would be a bar to a subsequent prosecution for the same stealing in the other county. 2 *Haw.* c. 35. § 4.

Yet it hath happened, says Lord *Hale*, that a man acquitted for stealing a *horse*, hath afterwards been convicted for stealing the *saddle*, though both were taken at the same time. 2 *Hale*, 246.

Where there is a variance between the record of the former acquittal, and the indictment to which it is pleaded, yet, if the nature of the crime be in substance the same, the variance may generally be helped by proper averments in the plea. 2 *Haw. c.* 35. § 3.

As, if a man be acquitted upon an indictment for murder, charged to be committed on one day, and be afterwards indicted for murder alleged to have been committed on another day, he may plead *autrefois acquit*, alleging the supposed offence to be the same; for the *day* is not material, and the death is of a person certain, who can be but once killed. 2 *Hale*, 244.

So, if a man be acquitted of an indictment for murder or robbery of J. S. and he be afterwards indicted for the murder or robbery of J. N. he may plead *autrefois acquit*, and aver the person to be the same, notwithstanding the variance in the surname; for a man, it is said, may have many surnames. *Ib.* 2 *Haw. c.* 35. § 3.

But where a prisoner was acquitted on an indictment for forgery, on a variance between the instrument produced and that recited in the indictment, it was held, that he could not plead *autrefois acquit* to another indictment for the same offence, which set forth the instrument correctly. *R. v. Coogan*, 1 *Leach*, 448. *R. v. Reading*, 2 *Leach*, 593, *per Buller, J.*

The plea of *autrefois acquit*, in the *R. v. Coogan*, was taken *ore tenus*, and the court rejected the record of the acquittal as insufficient proof of the plea. But if the plea had been in writing, and there had been an averment that the instrument set out in the first indictment, and that set out in the second, were in fact the same, it seems to be reconcilable with what is said in 2 *Haw. c.* 35. § 3. 4. that such a plea would have been available. *Deacon's C. L.* 96.

An *accessary* may plead the acquittal of his *principal;* for if there be no principal there can be no *accessary*. 2 *Hale*, 254. 3 *Inst.* 139.

So, if *A.* charged with a felony, breaks prison, and be acquitted of the principal felony, he may plead that acquittal to any indictment for felony, in the *breach of prison*. *Sawford's case.* 1 *Hale*, 611. 612. 2 *Hale*, 254.

Practice.

The prisoner is not entitled to a copy of the indictment to enable him to plead *autrefois acquit;* but he has a right to have the

indictment read very slowly and distinctly over to him. *R. v. Vandercomb*, 2 *Leach*, 711.

The plea, as well as the replication, may in general be pleaded *ore tenus*. *R. v. Coogan*. 1 *Leach*, 448. But the replication of *nul tiel record* cannot be pleaded *ore tenus*, except by the Attorney General, but must be written on parchment, and handed in to the court. 2. *Leach*, 715. Note (a).

If the indictment be for *felony* or treason, the defendant, besides the plea of *autrefois acquit*, should also plead over to the felony or treason. *Hale, Sum.* 249. *R. v. Vandercomb*, 2 *Leach*, 708.

The court upon issue joined as to the identity of the person or the offence, award a *venire* returnable *instanter;* and upon the sheriff making his return, the jury are immediately sworn to try the issue of *autrefois acquit*, the counsel for the prisoner having leave to address the jury in support of the affirmative of the issue. *R. v. Sheen.* 1 *Carr. & P.* 638. 1 *Leach*, 476.

Record of Acquittal.—(Cr. Cir. Com.)

Home District, } Be it remembered, that at the general quarter
to wit. } sessions of the peace of our Sovereign Lord the King, holden at the city of Toronto, in and for the said home district, on —— the —— day of —— in the year &c. before W. M., K. K., R. R. and Z. Z. esqrs. justices of our said Lord the King, assigned to keep the peace of our said Lord the King, in and for the said home district, and also to hear and determine divers felonies, trespasses and other misdeeds, committed in the said district, by the oath of &c. *(the grand jury stating all their names)* good and lawful men of the district aforesaid, then and there sworn and charged to inquire for our said Lord the King, for the body of the said district, it is presented in manner and form as followeth, that is to say,—Home District, to wit. The jurors &c. *(recite the whole indictment)*. Whereupon the sheriff of the said home district, is commanded that he cause the said A. B. to come to answer &c. and afterwards, to wit, at the same session of the peace holden at the city of Toronto, aforesaid, in and for the said home district, by adjournment, on *Wednesday* the—— day of the same month of —— in the year aforesaid, before the justices of our said Lord the King, above named, and other their fellows aforesaid, cometh the said A. B. in his own proper person, and having heard the said indictment read, the said A. B. saith that he is not guilty thereof, and concerning thereof he putteth himself upon the country; and —— esq. clerk of the peace for the said home district, who prosecutes for our said Lord the King, in this behalf doth the like; therefore let a jury thereupon come be-

fore the justices of our said Lord the King, at the next general quarter sessions of the peace of our said Lord the King, to be holden at the city of Toronto, aforesaid, in and for the said home district, by whom the truth of the matter may be better known, and who have no affinity to the said A. B. to recognize upon their oath, if the said A. B. be guilty of the premises aforesaid or not; because as well the said —— who prosecutes for our said Lord the King in this behalf as the said A. B. have put themselves on that jury, the same day is given as well to the said —— who prosecutes for our said Lord the King in this behalf, as to the said A. B. at which said next general quarter sessions of the peace, to wit, at the general quarter sessions of the peace of our said Lord the King, holden at the said city of Toronto, in and for the home district aforesaid, on *Monday* the —— day of —— in the said —— year of the reign of our said Lord the King, before W. M., G. H., F. P. and S. T. esqrs. and others their fellows, justices of our said Lord the King, assigned to keep the peace of our said Lord the King, in and for the home district, aforesaid; and also to hear and determine divers felonies, trespasses and other misdeeds, committed in the same district, cometh as well the said —— who prosecutes for our said Lord the King in this behalf, as the said A. B. in his own proper person; and the jurors of that jury, by —— esquire, sheriff of the said home district, to this matter empannelled and returned, to wit, *(the names of the petit jury)* being called, come, who being chosen, tried and sworn, to speak the truth of and upon the premises in the indictment aforesaid, above specified, do say, upon their oath, that the said A. B. is not guilty of the trespass and offence aforesaid, in the indictment aforesaid, above specified in manner and form as the said A. B. for himself above by his plea hath alleged; whereupon it is considered by the court here, that the said A. B. of the trespass *(or felony)* and offence aforesaid, in the indictment aforesaid, above specified, be discharged and go thereof without day.

AUTREFOIS ATTAINT.

A PERSON once *attainted* of felony being *civiliter mortuus*, and his property being forfeited to the King, cannot in general be indicted again for another felony—whether committed before or after his *attainder*—on the ground that, as he had forfeited all that he could forfeit, a prosecution for any other offence would be useless. A plea of *autrefois attaint*, therefore, is a good bar to an indictment for the same or any other felony of the like description. 2 *Haw. c.* 36. 4 *Bl. Com.* 336.

But as this rule is one rather of expediency than otherwise, it does not follow that after an *attainder* the party attainted may commit other felonies of a higher description, such as murder, rape, and the like, with impunity. A plea of *autrefois attaint* will therefore in such cases, or for other capital offences, be of no avail; and the party may be indicted and convicted, in order that he may undergo the higher degree of punishment—*forfeiture of goods* being only of secondary consideration in such cases.

AUTREFOIS CONVICT.

THIS plea (like that of *autrefois acquit*) can in general only be pleaded for the same identical felony;—it is (like that also) founded on the principle, that a man is not again to be placed in jeopardy for the same offence; and still less so, if he has already (as in this case) suffered the penalty due for it. 2 *Haw. c.* 36. § 10. 4 *Bl. Com.* 336.

And though no judgment may have been given upon the former conviction, still the plea of *autrefois convict* is a good bar to a second indictment for the same offence. 2 *Haw. c.* 36. § 14.

Record of Conviction.—See AUTREFOIS ACQUIT.

—— do say upon their oath, that the said A. B. is guilty of the trespass and offence aforesaid in the indictment aforesaid, above specified in manner and form, as by the said indictment above against him is alledged; whereupon it is considered by the court here that the said A. B. for the trespass and offence aforesaid, in the indictment aforesaid, above specified, be taken, &c. which said A. B. being present here is fined for the said trespass and offence three shillings and four pence, which he paid to the sheriff of the said home district, in court, to the use of our said lord the King; and the said A. B. is committed to the common gaol at the city of Toronto aforesaid, in the said home district, there to remain and be kept to hard labour for the space of six calendar months.

BAIL.

BAIL, (from the French word *bailler* to deliver) signifies the delivery of a man out of custody, upon the undertaking of one or more persons for him, that he shall appear at a day limited, to answer and be justified by the law. *Hale's P. C.* 96.

If a person be brought before a justice, and it appear that no felony has been committed, he may discharge him; but if it appear that a felony has been committed, though it appear not that the

party accused is guilty, yet the justice cannot discharge him, but must bail or commit him. *Ibid* 98.

At the common law bail was allowed in all cases but homicide; until the statute 3 *Ed.* 1. *c.* 15. which directs what offenders shall be bailed, and what not. *Hale's P. C.* 97.: and by statute 1 & 2 *P.* and *M. c.* 13. any person arrested for manslaughter or felony, or suspicion thereof, being bailable by law, shall not be bailed by any justices, but in open session, except it be by *two* justices at the least, and the same to be present together at the time of the bailment.

And now by statute 3 *W.* 4. *c.* 3. which recites, that it is expedient to define under what circumstances persons may be admitted to bail in cases of felony or misdemeanor, and to make better provision for taking examinations, informations, bailments and recognizances, and returning the same to the proper tribunals; and also for obtaining the evidence of prisoners confined in any prison, upon the limits thereof, without the necessity of suing out a writ of habeas corpus.

By § 1. it is enacted, that when any person shall be taken on a charge of felony, before one or more justice or justices, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as shall raise a strong presumption of the guilt of the person charged, such person shall be committed to prison by such justice or justices, in manner hereinafter mentioned; but if there shall be only one justice present, and the evidence shall neither raise a strong presumption of guilt, nor warrant the dismissal of the charge, such justice shall order the person charged to be detained, until he be taken before *two* justices at least—and where any person so taken, or in the first instance taken before two justices, and the evidence, in their opinion, shall not be such as to raise a strong presumption of guilt, and to require committal, but there shall notwithstanding appear ground for judicial inquiry, the person charged shall be admitted to bail, by such two justices, in the manner hereinafter directed. § 2. enacts, that the two justices, before they shall admit to bail, and the justice or justices before committal to prison, shall take the examination of such person, and the information of the witnesses, in writing, in the presence of the party accused, if he be in custody: and the two justices shall certify such bailment in writing, and every such justice shall have authority to bind by recognizance the witnesses, to appear at the assizes or sessions; and such justice or justices shall subscribe the examinations, informations, bailments, and recognizances, and deliver the same to the public prosecutor before the opening of the court. § 3. And every justice of the peace before whom any person shall be taken, on a charge of misdemea-

nor, shall take the examination of the party charged, and the information of the witnesses, upon oath, in writing, before he shall commit to prison or require bail; and in every case of bailment shall bind the witnesses by recognizance, as in cases of felony, and subscribe all informations, bailments and recognizances, and deliver same to the public prosecutor, as in cases of felony. § 5. And any justice acting contrary to this act, shall be fined by the court of oyer and terminer, or general gaol delivery, or sessions of the peace, respectively. § 6. Where any person shall be committed for trial by any justice or justices, or coroner, it shall be lawful for such prisoner, his counsel, attorney or agent, to notify the committing justices or coroner, that he will, so soon as counsel can be heard, move his Majesty's court of king's bench, or one of the judges, for an order to the justices of the peace or coroner of the district, to admit such person to bail; whereupon such committing justice or coroner, shall transmit to the crown office, close under hand and seal, a certified copy of all informations, examinations, and other evidences, touching the prisoners offence, with a copy of the warrant of commitment and inquest, and the packet containing the same, shall be handed to the person applying for the same, in order to such transmission, and shall be certified on the outside to contain the information touching the case in question. § 7. And upon any application to his Majesty's court of king's bench, or to any judge thereof, the same order touching the prisoner being bailed, or continued in custody, shall be made as if the party were brought up upon a habeas corpus.

By the declaration of rights, 1 *W. Sess.* 2. *c.* 2. excessive bail ought not to be required. To refuse bail where the party ought to be bailed, (the party offering the same) is a misdemeanor, punishable not only by the suit of the party but also by indictment. 2 *Haw.* 90. *H. P.* 97.: and to admit bail where it ought not to be admitted, is punishable by the judges of assize, by fine; or punishable as a negligent escape at common law. *H. P.* 97.—and so if a justice take insufficient bail. *Ib.* A justice of the peace cannot take bail for murder. 2 *Inst.* 186. And if a person be dangerously wounded, the justice ought to be very cautious how he takes bail, till the year and day be passed, for if the party die, and the offender appear not, the justice is in danger of being severely fined. 1 *Haw.* 138. The court of king's bench however, may admit a person to bail who has been committed for murder, if they think the circumstances of the case will justify their doing so. *Ld. Mohun's case*, 1 *Salk.* 104. *R. v. Magrath*, *Str.* 1242. If the bail taken be insufficient, the justice may require better sureties, and commit the party on refusal. 2 *Haw.* 89.

Acknowledging Bail in another Man's name.

By Stat. 21 *I. c.* 26. if any person shall acknowledge, or procure to be acknowledged, any bail in the name of any other, not privy to the same, he shall be guilty of felony without benefit of clergy. Bail taken before a judge, is not within this statute till it is filed of record. 1 *H. H.* 696. But it is within the following statute of 4 *W. c.* 4. which enacts, "that any person who shall personate another, before those who have authority to bail, so as to make him liable to the payment of any sum of money in that suit or action, shall be guilty of felony." If bail cannot otherwise be obtained, the law hath also provided a remedy by the *habeas corpus* act. 31. *C.* 2. See—post, "*Habeas Corpus.*"

BANISHMENT.

By statute 3 *W.* 4. c. 4. § 5. All other felonies (except capital) may be punished by banishment; *(see post title "punishment.")* and by statute 40 *G.* 3. c. 1. § 5. The offender shall remove himself within a space of time to be fixed by the court, being not less than two days nor more than eight, including the day on which sentence was passed.

BANKS, DESTROYING.

By the 6 *G.* 2. c. 37. If any person shall unlawfully and maliciously break down or cut down the bank of any river, or any sea bank, whereby any lands shall be overflowed or damaged, he shall be guilty of felony. § 5.

And by statute 10 *G.* 2. c. 32. If any person shall unlawfully cut off, draw off, or remove and carry away, any piles, chalk, or other materials, driven into the ground and used for the securing any marsh, or sea walls, or banks, in order to prevent the lands lying within the same from being overflowed and damaged, on complaint or information thereof made upon oath to any justice residing near the place, such justice shall summon the party complained of, or shall issue his warrant to apprehend and bring such person before him; and upon his appearance, or neglect to appear, he shall proceed to examine the fact, and upon due proof thereof, made either by confession, or oath of one witness, shall convict the offender, who shall thereupon forfeit £20; half to the informer and half to the overseer, for the use of the poor; to be levied by distress and sale; and for want of sufficient distress, to be committed to the house of correction, to be kept to hard labour for six months. § 5.

BARRATRY.

A BARRATOR, in legal acceptation, signifies a common mover, exciter, or maintainer of suits or quarrels, either in courts or in the country. 1 *Inst.* 368. 1 *Haw.* 243. *In courts*, means either courts of record, or not of record. *In the country*, in three manners; 1—in disturbance of the peace; 2—in taking or keeping possession of lands in controversy; 3—by false inventions and sowing of calumnious rumours and reports, whereby discord and disquiet may arise between neighbours. 1 *Inst.* 368. No one can be a barrator in respect to one act only. 1 *Haw.* 243. Neither is an attorney guilty of an act of barratry in respect of his maintaining another in a groundless action, to the commencing whereof he was no way privy. 1 *Haw.* 243. Nor shall a man be adjudged a barrator in respect of any number of false actions brought by him in his own right; for in such case he is liable to double costs.—1 *Haw.* 243.

By statute 34 *Edw.* 3. c. 1. Justices of the peace shall have power to restrain all barrators, and to pursue, arrest, take and chastise them, according to their trespass or offence.

As to the kind and manner of punishment it is said, that if the offender be a common person he shall be fined and imprisoned and bound to his good behaviour; and if he be of any profession relating to the law, he ought also to be further punished by being disabled to practise for the future. 1 *Haw.* 244.

BASTARD.

By statute 2 *W.* 4. c. 1. After reciting that doubts had been entertained respecting the true meaning of 21 *James* 1st. entitled "an act to prevent the destroying and murthering of bastard children," and the same had been found difficult and inconvenient to be put in practice; it is enacted, that the said act should not be in force in this province. § 2. That after the passing of this act the trial of any woman charged with murder of any issue of her body, male or female, which being born alive would by law be bastard, shall proceed and be governed by the like rules of evidence and presumption as in other trials for murder. § 3. That if any woman shall be delivered of a child, and shall by secret burying, or otherwise disposing of the dead body of the said child, endeavour to conceal the birth, every such offender shall be guilty of a misdemeanor, and upon conviction be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding two years; and it shall not be necessary to prove that the child died before, at, or after its birth.—Provided

also, that if any woman tried for the murder of her child shall be acquitted, the jury may find her guilty of the concealment, and the court pass sentence accordingly.

BAWDY-HOUSE

Keeping a bawdy-house is a common nuisance, as it not only endangers the public peace, by drawing together dissolute and debauched persons, but also tends to corrupt the morals of both sexes, by such an open profession of lewdness. 3 *Inst.* 204. 1 *Haw. c.* 74. 75. § 6. This offence is punishable by fine and imprisonment. 1 *Haw. c.* 74.

A married woman may be indicted for this offence, the same as if she were a *feme sole;* and may also be convicted of it together with her husband. *Rex. v. Williams*, 1 *Salk.* 383. And a man may be bound to his good behaviour for haunting bawdy-houses with women of bad fame, or for keeping bad women in his own house. 1 *Haw. c.* 74. And a constable is authorised by the common law, to arrest persons that resort to bawdy-houses. 1 *Haw. c.* 10. § 34.

Information and Complaint against a person for keeping a Bawdy-house.

Home District, } The information and complaint of A. B. of the
to wit. } township of —— in the said district, gentleman, taken upon oath, this —— day of —— 18— before me C. D. esq. one of his Majesty's justices of the peace &c. The said informant upon his oath, saith, that E. F. of —— and A. M. his wife, are the keepers of a common bawdy-house, at —— in the said township, and that men and women of ill fame are in the constant habit of resorting to the said house, at all hours of the night, and that the said house hath become and still remains a common nuisance.

Sworn, &c.

Warrant to apprehend the Keeper of a Bawdy-house.

To the Constable of ——

Home District, } Whereas information and complaint hath this
to wit. } day been made upon oath, by A. B. of —— before me C. D. Esq. one of his Majesty's justices of the peace for the said district, that E. F. of —— and G. H. his wife, keep and maintain a house of ill fame, and a common bawdy-house, at —— and that lewd women frequently resort thither, with men of dissolute lives, to the great scandal of the neighbourhood, the en-

couragement of vice and debauchery, and against the King's peace. These are therefore in his Majesty's name, to command you to bring the said E. F. and G. H. before me, at—— on—— the —— day of —— at —— o'clock in the —— noon, to answer to the complaint of the said A. B. and to be further dealt with according to law. Given under my hand and seal, &c.

Condition of a Recognizance to appear and prosecute.

The condition of this recognizance is such, that if the above bounden A. B. shall and do personally appear at the next general quarter sessions of the peace, to be holden at the city of Toronto, in and for the said home district, and then and there prefer and give evidence upon a bill of indictment, before the grand jury, against E. F. of —— and G. H. his wife, for keeping a common bawdy-house, and in case the said bill shall be found a true bill, then if the said A. B. shall prosecute the same with effect, and not depart the court without leave, this recognizance to be void, otherwise in full force.

Condition of a Recognizance to appear and answer.

The condition of this recognizance is such, that if the above bounden E. F. and G. H. his wife, shall personally appear at the next general quarter sessions of the peace, to be holden at the city of Toronto, in and for the said home district, and then and there answer to a bill of indictment to be preferred against them for a nuisance, then this recognizance to be void, otherwise in full force.

Commitment for want of Sureties.

To the Constable of —— and to the Keeper of his Majesty's gaol in and for the Home District.

Home District, } Whereas information &c. (as in the warrant) and
to wit. } the said E. F. and G. H. not being able to give sufficient security for their appearance at the next general quarter sessions of the peace, to be holden in and for the said district, to answer to a bill of indictment, to be then preferred against them for the said offence. These are therefore in his Majesty's name to require and authorise you the said constable, to convey the said E. F. and G. H. to the said gaol, and to deliver them to the keeper thereof: and you the said keeper are hereby required to receive the said E. F. and G. H. into your custody, and them safely keep in your gaol, until they shall give such security as aforesaid, or be otherwise discharged in due course of law. Given under my hand and seal &c.

Indictment for keeping a Bawdy-house. (Archbold.)

Home District, } The jurors &c. That I. S. late of &c. labourer,
to wit. } and A. his wife, on the —— day of —— in the —— year of the reign of our Sovereign Lord William the fourth, and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at the township aforesaid, in the county and district aforesaid, unlawfully did keep and maintain a certain common, ill-governed and disorderly house, and in the said house, for the lucre and gain of him the said I. S. certain persons, as well men as women, of evil name and fame, and of dishonest conversation, then and on the said other days and times, there unlawfully and willingly did cause and procure to frequent and come together, and the said men and women, in the said house of him the said I. S. at unlawful times, as well in the night as in the day, then and on the said other days and times, there to be and remain drinking, tippling, whoring and misbehaving themselves, unlawfully and wilfully did permit, and yet do permit, to the great damage and common nuisance of all the liege subjects of our said lord the King, there inhabiting, being, residing and passing, to the evil example of all others in the like case offending, and against the peace of our lord the King, his crown and dignity.

BEEF AND PORK.

By Stat. 45 *G.* 3. *c.* 8. the Lieutenant Governor is authorised to appoint one or more inspectors in each district, to be inspectors of beef and pork, who shall, before entering upon his office, take the following oath before a justice of the peace.

"I do solemnly swear, that I will faithfully, truly and impartially, to the best of my judgment, skill and understanding, execute, do and perform, the office and duty of an inspector, packer and re-packer of beef and pork, according to the true intent and meaning of an act entitled, 'An Act to regulate the curing, packing and inspection of beef and pork;' and that I will not directly or indirectly, brand or suffer any cask of beef or pork to be branded, but what shall be sound and good."—Which oath shall be filed with the clerk of the peace, and each inspector shall in the month of June in every year, make a return to the Lieutenant Governor of the whole number of barrels inspected by him during the preceding year. § 2. No inspector shall be a dealer in beef or pork, except for the necessary consumption of his family. § 3. No beef shall be packed or repacked for foreign markets, unless it be of fat cattle, not under three years old, cut in square pieces, not ex-

ceeding 12 lbs. weight, nor less than 4 lbs. weight, and the same shall be sorted for packing and repacking, and denominated mess, prime and cargo. Mess beef shall consist of the choicest pieces of oxen, cows or steers, well fatted; the shin, shoulder and neck shall be taken from the fore quarters, and the legs and leg rounds from the hind quarters, and each barrel containing beef of this description, shall be branded on one of the heads, with the words *mess beef.* That prime beef shall consist of choice pieces of oxen, steers, cows and heifers, amongst which there shall not be more than half a neck, and one shank with the hock cut off; and one of the heads of all barrels containing beef of this description, shall be branded with the words *prime beef.* That cargo beef shall consist of fat cattle of all descriptions, of three years old and upwards, with not more than half a neck, and three shanks without the hocks, in each barrel, and shall be otherwise merchantable; and such barrel shall be branded on one of the heads, with the words *cargo beef;* and every barrel of beef shall be well salted, with not less than 40 lbs. of clean Saint Ubes, Isle of Man, Lisbon, Turks Island salt, or other salt of equal quality, exclusive of a pickle made as strong as salt will make it; and to each barrel of beef 2 oz. of saltpetre. § 4. Every beef barrel shall be of good seasoned white oak staves, and heading free from every defect, and shall contain 200 lbs. weight of beef, and shall not be of a larger guage than 30 gallons, and shall be hooped with fourteen good ash, hickory, or oak hoops, the heads to be made of good thick stuff; the hoops to be well set and drove. § 5. One head of every barrel of beef or pork shall be branded with the weight it contains, the inspector's name, and the district, with the addition of Upper Canada, in legible letters. § 6. No inspector shall act out of his district, under the penalty of twenty shillings. § 7. And for refusing or neglecting to inspect beef or pork, for the space of two days after application, shall forfeit forty-shillings to the use of the person injured by such delay. § 8. Every inspector shall be entitled to one shilling and six pence for each barrel of beef or pork he shall salt, pack, inspect and pickle, exclusive of cooperage; and six pence for every mile he shall travel, to be paid by the owner. § 9. Any inspector guilty of neglect or fraud, shall forfeit a sum not less than forty shillings, nor more than twenty pounds. § 10. Any person shifting any beef or pork out of any cask inspected or branded, or putting in any other for sale, shall for every offence, forfeit ten pounds. § 11. And counterfeiting any brand-mark twenty pounds. § 12. Pork barrels shall be made of good seasoned white oak staves, and heading free from every defect, and each barrel shall contain 200lbs. weight, and shall not be of a larger guage than 30 gallons, and in all other respects the same as beef barrels.

§ 13. There shall be two qualities of pork, viz. :—mess and prime pork. Mess pork shall consist of the rib pieces of good fat hogs only: barrels containing such pork shall be branded on one of the heads, *mess pork*. Prime pork shall consist of the next best pieces with not more than six shoulders or legs, with the shanks cut off, in one barrel; and one of the heads of every such barrel shall be branded *prime pork*; such pork to be cut in square pieces, and as nearly as possible in pieces of 4lbs. weight; and shall be salted and pickled, and when inspected, branded in like manner as beef, designating the different qualities or denominations. § 14. The inspector shall give the owner or agent the following certificate under his hand and seal.

I do hereby certify, that I —— have inspected —— barrels of cargo, mess or prime pork, *(as the case may be)* the property of —— and that the said mess, prime, or cargo beef, mess or prime pork, is in every respect packed and branded agreeable to the laws of the province of Upper Canada.

Sec. 15. No person shall by this act be compelled to have his beef or pork inspected. § 16. All fines and forfeitures shall be recoverable by the magistrates in quarter sessions, and in order thereto, any justice may summon the accused to appear at the next general quarter sessions; and one moiety of such fines shall be paid to the receiver general, for the use of the province, and the other to the person who shall sue.

BENCH WARRANT.

By Stat. *55 G. 3. c. 2.* § 3. the process upon every indictment to bring the person indicted into court, shall be a capias, in the usual form, issued from the court before whom the said indictment shall be found, directed to the sheriff of the district wherein the said court shall be then sitting, commanding him to take the person so indicted and bring him before the said court; and if the person cannot be taken during the sitting of the said court, that then so soon after as he shall be taken, he do bring or cause him to be brought before some justice of the peace of the said district, to be dealt with according to law; which said capias shall be made returnable in the court of king's bench on the first day of the term next after the sitting of the said court before which the said indictment shall have been found. And if upon the return of the said writ the sheriff of the said district shall return that the person therein named is not to be found in his district, then an *alias* writ of capias shall issue from the court of king's bench, under the seal of the said court, tested of the first day of term, if in term time, or on the last day of the preceding term, if in

vacation, returnable before the said court of king's bench on the first day of the term next ensuing. § 4. And if to the said writ of alias capias the sheriff shall return *non est inventus*, then upon motion in court, or before a judge in vacation, a writ of exigent shall issue. For further proceedings see title "Outlawry."

The above act was allowed to expire, but was revived and continued by the 3 *W.* 4. *c.* 6. (passed in February 1833) for six years, and to the end of the next session.

After an indictment found, any private person, without a warrant, may arrest the offender. *Dalt. c.* 170. § 5.

Upon the party being taken, (if the charge be *misdemeanor* only) he may give recognizance to appear to any magistrate, who thereupon will grant a *supersedeas* of the warrant. But if the charge be *felony*, magistrates should be exceedingly cautious in taking bail after an indictment found by the grand jury; and the better course would perhaps be, to leave the prisoner to apply to a judge, who will bail him or not, according to his discretion.

Form of a Bench Warrant.

To the Sheriff of the Home District—Greeting:

Home District, to wit. } These are to will and require, and in his Majesty's name to command you, upon sight hereof, to bring before us J. C. and S. P. esquires, two of his Majesty's justices of the peace for the home district, at the general quarter sessions of the peace, now being holden at the city of Toronto, in and for the said home district, or such other two or more of his Majesty's justices of the peace for the said home district as shall be then and there sitting, the body of A. B. who stands indicted before us at this same sessions for an assault, *(or for grand larceny)* if the court shall be then and there sitting; and if he cannot be taken during the present sessions, that then so soon after as he shall be taken you bring or cause him to be brought before some justice of the peace of the said district, to be dealt with according to law; and what you shall have done herein make appear to his Majesty's justices of the court of king's bench at Toronto, on the first day of ——— term now next ensuing, and have you there this warrant. Dated in open sessions, at the city of Toronto aforesaid, this ——— day of ——— in the year of our Lord 18—.

J. C.
S. P.

Form of Commitment if for Felony.

To the keeper of the common gaol at Toronto, in the home district.

Home District, to wit. } Receive into your custody the body of A. B. herewith sent you, brought before me, G. H.

esquire, one of his Majesty's justices of the peace in and for the said district, by G. B. constable of the said district, by virtue of a bench warrant issued at the general quarter sessions of the peace holden at Toronto aforesaid, in and for the said district, on the ——— day of ——— last, against the said A. B. upon a bill of indictment then and there found against the said A. B. for grand larceny, and him safely keep in your custody until he shall be discharged in due course of law. Given under my hand and seal, this ——— day of ——— in the year of our Lord 18—.

BENEFIT OF CLERGY.

BENEFIT of Clergy was a privilege allowed by the law to clerks in orders, and afterwards to those among the laity who could read, by virtue of which, a criminal, though duly convicted, was discharged from the sentence of the law in the King's courts, and delivered over to the ordinary, to be dealt with according to the ecclesiastical canons. 4 *Bl. Com.* 368. Owing to the ancient severity of the British law, which subjected all persons convicted of felony of any description to the penalty of death, the benefit of clergy appears to have been a remedy invented by the church in her day of power to rescue offenders convicted of felony from the punishment consequent thereon; subsequently, the legislature, to distinguish such crimes as were by statute to be punished with death, usually enacted, that the offender upon conviction, should be deemed guilty of felony without benefit of clergy—thus leaving the criminal to rely only upon the royal prerogative for a mitigation of his punishment. The real distinction therefore in cases of felony, appears to have been this:—Felonies at the common law or by statute, within the benefit of clergy, were no longer deemed capital; but such as were not within this privilege, partook of all the ancient rigour of the law, and were deemed capital or punishable with death. Benefit of clergy is now very properly abolished, and a milder criminal code substituted: this important change was effected in England, by statute 7 & 8 *G.* 4. *c.* 28. and in this province, by statute 3 *W.* 4. *c.* 4. and by the latter statute such felonies as are in future to be deemed capital and punishable with death, are therein expressly mentioned.

BIGAMY.

BIGAMY signifies, in criminal law, the offence of having two wives or two husbands at the same time. 4 *Bl. Com.* 163.

By stat. 1 *J.* 1. *c.* 1. it is enacted, that if any person within his Majesty's dominions of England and Wales, being married, shall

marry any person, the former husband or wife being alive, such offence shall be felony: but this act shall not extend to any person whose husband or wife shall be continually remaining beyond seas by the space of seven years together, nor to any person whose husband or wife shall absent himself or herself from the other, by the space of seven years together, in any part of his Majesty's dominions, the one of them not knowing the other to be living within that time; nor to any person who shall be at the time of such marriage divorced by sentence in the ecclesiastical court; nor to any person whose former marriage hath been by sentence in the ecclesiastical court declared to be null and void; nor to any person by reason of any former marriage within the age of consent, (i. e. the woman being under twelve or the man under fourteen. 3 *Inst.* 89.)

Warrant of Commitment for Bigamy. (Toone.)

To the Gaoler or Keeper of the gaol of the Home District.

Home District, } Receive into your custody in the said gaol, and
to wit. } there safely keep, until he shall be discharged by due course of law, the body of A. B. herewith sent you, and charged before me J. C. esq. one of his Majesty's justices of the peace in and for the said district, on the oaths of C. D. and E. F. and others, for that he the said A. B. on the —— day of —— in the year of our lord 18— at —— did marry one G. H. spinster, and her the said G. H. then and there had for his wife; and that the said A. B. afterwards, to wit, on the —— day of —— in the year aforesaid, at —— feloniously did marry and take to wife one L. S. spinster, the said G. H. his former wife being then living, against the form of the statute in such case made and provided, (the said C. D. having also made oath before me the said justice, that the said A. B. was apprehended and taken for the said felony, at —— in the said district). Given under my hand and seal this —— day of —— in the year of our Lord 18—.

BILLIARD TABLES.

By Stat. 50 *G.* 3. *c.* 6. a duty of £40 is imposed upon every person keeping any billiard table for hire or gain. § 2. And no person shall have in his possession any billiard table for hire or gain without a license from the inspector, under the penalty of £100, to be recovered by action of debt, bill plaint, or information in his Majesty's court of King's Bench.

BLACK ACT.

By Stat. 9 *G.* 1. *c.* 22. (commonly called the black act) which is required to be read at every sessions: and by the 6 *G.* 2. *c.* 37.

and the 10 *G.* 2. *c.* 32. which by several continuances were in force till Sept. 1, 1757, and finally, by the 31 *G.* 2. *c.* 42. were made perpetual; and also by the 27 *G.* 3. *c.* 15. it is enacted as follows:—If any person or persons shall unlawfully and maliciously break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed, or shall unlawfully and maliciously kill, maim, or wound any cattle, or cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard or plantation, for ornament, shelter or profit; or shall set fire to any house, barn, or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay or wood; or shall wilfully and maliciously shoot at any person in any dwelling-house or other place; or shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing; [or threatening to kill or murder any of his Majesty's subjects, or to burn their houses, out-houses, barns, stacks of corn or grain, hay or straw.—27 *G.* 2. *c.* 15.] or shall forcibly rescue any person, being lawfully in custody of any officer or other person for any the said offences; or shall by gift or promise of money, or other reward, procure any of his Majesty's subjects to join him or them in any such unlawful act; or shall unlawfully and maliciously break down or cut down the bank of any river, or any sea bank, whereby any lands shall be overflowed or damaged; or shall unlawfully and maliciously cut any hop-vines growing on poles in any plantation of hops; or shall wilfully and maliciously set on fire, or cause to be set on fire, any mine, pit, or delph of coal or cannel coal,—every person so offending, being thereof convicted, shall be adjudged guilty of felony.

And if any person shall apprehend, or cause to be apprehended, any such offender, and shall be killed, or wounded so as to lose an eye or the use of any limb, in apprehending or securing, or endeavouring to apprehend or secure any such offender, on proof thereof at the sessions where the offence was committed, the justices shall give a certificate thereof to the person wounded, or to the executors or administrators of the person killed, by which they shall be entitled to receive of the sheriff £50, to be allowed in his accounts, which he shall pay in 30 days from the time the certificate shall be shewn to him, on pain of forfeiting to the party £10; for which, and the penalty, the party may bring his action.

BLASPHEMY AND PROFANENESS.

ALL blasphemies against God, as denying his being or providence; and all contumelious reproaches of Jesus Christ; all profane scoffing at the holy scriptures, or exposing any part of them to con-

tempt or ridicule; impostures in religion, as falsely pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgement; and all open lewdness grossly scandalous, are punishable by fine and imprisonment, and also such corporal punishment as to the court shall seem meet, according to the heinousness of the crime. 1 *Haw.* 6. 7.

And if any person shall, in any stage play, interlude, shew, may-game, or pageant, jestingly or profanely speak or use the holy name of God, or of Christ Jesus, or of the Holy Ghost, or of the Trinity, he shall forfeit £10—half to the King and half to him that shall sue. 3 *J. c.* 21.

BOUNDARY LINES.

By 38 *G.* 3. *c.* 1. monuments may be placed at the corners of every township and concession, and the lines from the monuments so erected, shall be the permanent boundary lines of such townships and concessions. § 4. Any person knowingly and willfully pulling down, defacing, altering or removing any such monument, shall be guilty of felony. § 6. Upon application made to the sessions by thirty freeholders of any township, to have monuments erected, such justices shall form an estimate of the expense, and lay an equal assessment upon every acre of land within such township, to be raised and collected by a warrant under the hands and seals of any two of them, directed to the collectors of such townships, in such manner and by such means as in other cases, and to pay the same, when collected, to the treasurer of the district, to answer the charges incurred by erecting such monuments. § 7. Provision made for collecting same on unoccupied lands, by notice in the Gazette, and sale of part thereof to pay such assessments.

BREAD.

By the 6 *G.* 4. *c.* 6. entitled, "An Act for the better regulating the assize and fixing the price of bread, in the several police towns throughout this province," it shall be lawful for such of his Majesty's justices of the peace residing within the limits of any town in this province where a police is established, or residing within the limits of the division constituted for the time being for holding a court of requests in said town or towns, to assemble on the first and third Saturday in each month, at the court-house in each town; and two of the said justices then present, may assize and fix the price of bread; and if more than two present, the majority shall fix the same for each ensuing intermediate period; or if no justices shall be present, or no change be found necessary, then the last

assize made shall continue in force until varied or changed by a new assize. § 2. The clerk of the market is required to keep a just and fair statement in a book, of the daily price or prices of flour in the market, and exhibit the same to any two justices, and make oath of the correctness, if required. § 3. The aforesaid statement of the average price of flour for the fourteen days previous, shall be the guide for the said justices, to assize and fix the price of bread for the ensuing fourteen days, with due regard to the existing price of flour, fuel and labour. § 4. Within twenty-four hours after such assize made, the clerk of the market shall affix a notice thereof in some conspicuous place on the market-house. § 5. Penalty of ten shillings upon every baker who shall not conform to such assize, to be recovered before any two justices, upon the oath of one or more witnesses, to be levied by distress and sale. § 6. Fines to be applied for police purposes.

BRIBERY.

BRIBERY, is the receiving of any undue reward by any person whatsoever, whose ordinary profession or business relates to the administration of public justice, or who is in any official situation, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity; and the person who *gives* the bribe is as much guilty of the offence as he who takes it. 3 *Inst.* 149. 1 *Haw. c.* 67. § 2. 4 *Bl. Com.* 139.

The offence of bribery is punishable with *fine and imprisonment.* 1 *Haw. c.* 67. § 3.

In judges, especially the superior ones, says *Blackstone*, bribery hath always been looked upon as so heinous an offence, that the chief justice *Thorp* was hanged for it, in the reign of Edward III. 4 *Bl. Com.* 140.

By a Statute of 2 *Hen.* 4. all judges, officers, and ministers of the King, convicted of bribery, shall forfeit treble the bribe, be punished at the King's will, and be discharged from the King's service for ever. 3 *Inst.* 146.

So, a mere *attempt* to bribe a judge or a juryman, is punishable by law in the party that offers it. 3 *Inst.* 147. *R. v. Young, cit.* 2. *East, Rep.* 14. 16.

Bribery at *elections for members of parliament*, was always an offence at *common law*, and punishable by indictment or information. *R. v. Pitt*, 3 *Burr.* 1335.

BUGGERY.

BUGGERY is a detestable and abominable sin, not to be named, committed by carnal knowledge against the ordinance of the crea-

tor and order of nature, by mankind with mankind, or with brute beast, or by womankind with brute beast. 3 *Inst.* 58. And by stat. 25 *H.* 8. *c.* 6. buggery committed with mankind or beast, is made felony; which said statute making it felony generally, there may be accessories before and after, but those that are present, aiding and abetting, are all principals; and although none of the principals are admitted to their clergy, yet accessories before and after are not excluded from clergy. 1 *H. H.* 670.

If the party buggered be within the age of discretion, (fourteen years) it is no felony in him, but in the agent only; but if buggery be committed upon a man of the age of discretion, it is felony in both of them. 3 *Inst.* 59. 1 *H. H.* 670.

By statute 3 *W.* 4. *c.* 4. which has abolished capital punishment in numerous instances, the crime of buggery is expressly named as one to continue punishable with death.

BURGLARY.

Burglary is a felony at common law, in breaking and entering the mansion-house of another in the *night*, with intent to commit some felony within the same, whether the felonious intent be executed or not.

By Stat. 12 *An. c.* 7. if any person shall enter into the mansion-house of another by day or by night, without breaking the same, with an intent to commit felony, or being in such house shall commit any felony, and shall in the *night time* break the said house to get out, he shall be guilty of burglary.

Every entrance is not a breaking;—as, if the door stand open, and the thief enter—this is no breaking. So if the window be open, and the thief draw out some of the goods—this is not burglary, because there is no actual breaking. But if the thief break the glass of the window, and draw out the goods—this is burglary. 3 *Inst.* 64. And lord Hale says, these acts amount to an actual breaking:—opening the casement, or breaking the glass window; picking open the lock of the door, or putting back the lock; or the leaf of a window; or unlatching the door that is only latched. 1 *H. H.* 552. And so does the pushing open of folding doors. *Rex. v. Brown.* 2 *East. P. C.* 487. 2 *Russ.* 902. Pulling down the upper sash of a window. *Rex. v. Haines.* *Russ. & Ry.* 451. *S. C. nom.* *Rex. v. Harrison.* 1 *Chetw. Brom.* 497. Creeping down a chimney. *Cromp.* 32. *Dalt.* 253. 1 *Haw. c.* 38. § 6.

The breaking is not confined to the outer door, or external parts of a house; for if A. enters the house of B. the outward door being open, or by an open window, and when within the

house, turn the key of a chamber door, or unlatch it, with intent to steal—this will be burglary. *Johnson's case*, 2 *East. P. C.* 488. And the like if any lodger in a house, or guest in a public inn, open and enter another persons chamber door, with intent to commit a felony. 1 *Hale* 553. 554. 4 *Bl. Com.* 227. *Rex. v. Bington*, 2 *East. P. C.* 488. But if an inn-keeper break the chamber of his lodger or guest, at night, to rob, this would not be burglary; for a man cannot commit a burglary by breaking his own house. 2 *East. P. C.* 502. *Kel.* 84.

Constructive breaking, is where, in consequence of *violence* commenced or threatened, the owner of the house, (through fear, or in order to repel the violence) opens the door, and the thief then enters,—this amounts to burglary; for the opening of the door in this case, is as much imputable to the thief as if it had been done by his own hands. *Crompt.* 32 *(a.)* 1 *Hale* 553. 2 *East. P. C.* 486. And so, if in consequence of any *fraud* or *deceit*, the owner is induced to open his door to the thieves—this will amount to breaking.—As where thieves came with a pretended hue and cry, and required a constable to go with them to apprehend the owner and search his house; and the owner, at the command of the constable, open the door, when the thieves bound the constable and robbed the house;—this was held to be burglary. 1 *Hale* 553. 3 *Inst.* 64. *Cromp.* 32 *(b.)* 4 *Bl. Com.* 226. And the like if a man go to a house under pretence of being authorised to make a distress, and by this means obtain admittance. *Gascoigne's case*, 1 *Leach*, 284. For in all these cases, the law will not endure to have its justice defrauded by such evasions. 1 *Haw. c.* 38. § 5. 4 *Bl. Com.* 227.

What is an Entering.

It is deemed an entry when the thief breaketh the house, and his body, or any part thereof—as his foot, or arm, is within any part of the house; or when he putteth a gun into a window which he hath broken; or into a hole of the house which he hath made, with intent to kill or murder. 3 *Inst.* 64. Or where the thief merely puts his fingers within the window. *Rex. v. Davis*, *Russ. & Ry.* 499. But if he shoots *without* the window, and the bullet only comes in, the point is doubtful. 1 *Hale*, 555. Yet Hawkins says, this is a sufficient entry. 1 *Haw. c.* 38. § 11. Where a glass window, which had shutters inside, was broken, and the window was opened with the hand, but the shutters were not broken or opened—this was ruled to be burglary. *Rex. v. Roberts*, *alias Chambers*, 1 *East. P. C.* 487. But as in this case, *Holt. C. J.* and *Powell, J.* doubted, and inclined to another opinion, no judg-

ment was given. But in a recent case, the same point was before the judges, who were of opinion (three being absent) that the entry was sufficient. *Rex. v. Baily, Russ. & Ry.* 341.

If divers come in the night to do a burglary, and one of them break and enter, the rest of them standing to watch at a a distance—this is burglary in all. 3 *Inst.* 64.

What is a Mansion or Dwelling-house.

Where the whole of the house is let out into lodgings, and the owner does not inhabit any part of it, though there is only one outer door common to all its inmates, yet every separate apartment is the distinct mansion-house of its possessor. *Rex. v. Trapshaw*, 1 *Leach*, 427. So where a loft over a coach-house and stables was converted into lodging rooms. *R. v. Turner*, 1 *Leach*, 305.

But where the owner of a dwelling-house lets off the shop to a tenant, who occupies it by means of a *different entrance* from that belonging to the dwelling-house, and carries on his business in it, but never sleeps there, it then becomes so severed from the rest of the house, as no longer to be a place where burglary can be committed; for it ceases to form parcel of the dwelling-house of the owner, being thus severed by lease as well as by the distinct mode of ingress and egress to it; and it does not become the dwelling-house of the tenant, when neither he nor any of his family sleep there. 1 *Hale*, 557. *Kel.* 83. 4 *Bl. Com.* 225, 2 *East. P. C.* 507. But if the tenant, or his servant, should usually, or often, sleep in the shop at night, it would then become the dwelling-house of the tenant. 1 *Hale*, 558.

There is no severance, however, where there is *any internal communication*, though there may be a separate entrance from without to the part let off; as where the communication was formed by means of a trap-door and a ladder, which were seldom used, but the trap-door was never fastened. Lord Ellenborough said it could make no difference whether the communication was through a trap-door, or by a common stair-case. *Rex. v. Stockton*, 2 *Taunton*, 339. 2 *Leach*, 1015. And when the owner of the house continues to sleep in it, no part of it then can be so severed, by being let off to a tenant or a lodger, as to become a separate mansion-house. *Rex. v. Rogers*, 1 *Leach*, 89. 2 *East. P. C.* 507. Unless, indeed, that which was one house originally comes to be divided completely into two separate tenements, and there is a distinct outer door to each, without any internal communication; in which case, they will then become separate houses. *Per Ld. M. Cowp.* 8. But if the owner of a house neither *inhabits* it himself, nor any of his family, it will not then become *his* dwel-

ling-house, as applicable to the offence of burglary. Therefore, when a man purchases or rents a house with intention to reside in it, and moves some of his furniture into it, but neither he nor any of his family ever sleep there, and it is broken open in the night time,—the judges have determined that a breaking into a house of this description does not amount to burglary. *R. v. Lyons*, 1 *Leach*, 185. 2 *East. P. C.* 496. *R. v. Hallard*, 2 *East.* 498. 2 *Leach*, 701. *(note a.)* *R. v. Thompson*, 2 *Leach*, 771. 2 *East.* 498. *Contra* 1 *Haw. c.* 38. § 18. 1 *Kel.* 46. And this—even though the owner of the house has used it for his meals, and for all the purposes of his business. *Rex. v. Martin*, *Russ. & Ry.* 108. Or, though a person actually sleep in the house for the purpose of protecting it, if such person forms no part of the domestic family of the owner,—as where the owner puts in a workman or other person, who is in no situation of servitude to him, for the purpose of taking care of his goods. *Rex. v. Fuller*, 2 *East. P. C.* 498. 1 *Leach*, 186. *(note b.)* *Rex. v. Harris*, 2 *Leach*, 701. 2 *East. P. C.* 498.

So if a servant is put into a ware-house to watch goods, this does not make it a dwelling-house. *Rex. v. Smith*, 2 *East. P. C.* 497.

But where the owner of the house has once inhabited it, it will not cease to be his dwelling-house on account of any occasional or temporary absence, provided he has the *animus revertendi*—the intention of returning to it;—in such cases, the premises may be the subject of burglary. *Rex. v. Murray & Harris*, 2 *East. P. C.* 496. *cit. Fost.* 77. But where a person had a country house at which he lived only a part of the year, and then quitted, with a considerable part of his furniture, with no intention of immediately returning, and during his absence the house was broken open and rifled—this was held not to be burglary. *Fost.* 76. 77.

And now, by stat. 3 *W.* 4. *c.* 4. § 10. it is enacted, that no building, although within the same curtilage with the dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house, for the purpose of burglary, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other. And by § 12. accessories before the fact shall be punishable as principals.

Of the time of committing the Offence.

It must be *in the night*, and, generally speaking, in the darkness of the night; for though the day was formerly accounted to begin only at sun-rise, and to end immediately upon sun-set, yet

it is now settled that if there be daylight or twilight enough to discern a man's face, there can be no burglary. 3 *Inst.* 63. 1 *Hale*, 550. 1 *Haw. c.* 38. § 2. 4 *Bl. Com.* 224. 2 *East. P. C.* 509. But this does not extend to moonlight, for then many midnight burglaries would go unpunished; and the malignity of the offence, as Blackstone observes, does not indeed so properly arise from its being done in the dark, as at the dead of night, when all the creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenceless. 4 *Bl. Com.* 224.

The breaking and entering need not be the *same night;* for if thieves break a hole in the house one night, with the intent to enter another night and commit a felony, and they accordingly do so, through the hole they made the night before—this seems to be burglary. 1 *Hale*, 551. 4 *Bl. Com.* 226.

Of the Intent.

The intent of the breaking and entering must be to commit a *felony.* Therefore, if the intention was only to commit a *trespass,* the offence will not be a burglary. Thus, an intention to *beat* a man in the house, will not be sufficient; for though killing or murder may be the consequence of beating, yet if the primary intention were not to kill, a breaking and entering for the purpose of beating, will not amount to burglary. 1 *Hale*, 561. 2 *East. P. C.* 509. And where a man broke into a house with intent to commit a rape—this was held to be burglary. *Rex. v. Gray*, 1 *Str.* 481.

By stat. 23 *G.* 3. *c.* 88. it is enacted, that if any person shall be apprehended having upon him any picklock, key, crow, jack-bit, or other implement, with an intent feloniously to break and enter into any dwelling-house, out-house, &c.; or shall have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent feloniously to assault any person; or shall be found in or upon any dwelling-house, ware-house, coach-house, stable or out-house, or in any inclosed yard or garden, or area, belonging to any house, with an intent to steal, he shall be deemed a rogue and vagabond within the intent and meaning of the 17 *G.* 2. *c.* 5.

Warrant.

Home District. } To the Constable of —— in the said Home District.

Forasmuch as A. J. of —— yeoman, hath this day made information and complaint upon oath, before me, J. P. esquire, one

of his Majesty's justices of the peace for the said district, that yesterday, in the night, the dwelling-house of him the said A. J. at —— aforesaid, was feloniously and burglariously broken open, and one silver tankard, of the value of five pounds, of the goods and chattels of him the said A. J. feloniously and burglariously stolen, taken, and carried away from thence; and that he hath good cause to suspect that A. O. late of —— in the township of —— in the said district, labourer, the said felony and burglary did commit: These are, therefore, in his said Majesty's name to command you, that immediately upon sight hereof you do apprehend the said A. O. and bring him before me, to answer the premises, and to be further dealt with according to law.—Herein fail you not. Given under my hand and seal, the —— day of ——.

BUTTER AND CHEESE.

Every farmer and other person packing up butter for sale, shall set upon every firkin and cask, when the same is fully seasoned in water, a continuing visible mark of the just weight of the empty cask, on pain of forfeiting, for every offence the sum of ten shillings, for every cwt. of butter otherwise packed, and so proportionably for a greater or lesser quantity; half to the churchwardens and overseers, for the use of the poor, and half, with double costs, to him who shall sue for the same in sessions, by action of debt indictment, information or presentment. 13 & 14 *C.* 2. *c.* 26. § 5. 6. Also, every potter shall set upon every pot which he shall sell for packing up butter, the just weight of the pot when it is burnt, together with the first letter of his christian name, and his surname at length, on pain of one shilling; and no person shall expose to sale any butter packed up in any pot not so marked, on pain of two shillings for every such pot, to be recovered and applied in like manner. 13 & 14 *C.* 2. *c.* 26. § 6. Every kilderkin of butter shall contain 112lbs. and every firkin 56lbs. neat, or above; every pound containing 16oz. besides the tare of the cask, of good and merchantable butter; and every pot of butter shall contain 14lbs. neat, or above, besides the weight of the pot: and no butter which is old or corrupt, shall be mixed or packed up with any butter which is new and sound; nor any whey butter shall be packed or mixed with any butter made of cream; and every cask or pot of butter shall be of one sort and goodness; and no butter shall be salted with any great salt, but shall be salted and saved with small salt, nor more salt shall be intermixed with it than shall be needful for its preservation, on pain, that every owner, farmer, or packer of butter, not putting up in each kilderkin, firkin and pot, to be sold or exposed to sale, such quantities as aforesaid, or

offending in false packing as aforesaid, for every offence shall forfeit the value of all the butter so false packed; and for every offence where any kilderkin, firkin or pot, shall be found to contain a lesser quantity of butter than as above, six times the value of every pound of butter that shall be wanting in such cask or pot; to be recovered and applied as aforesaid. 13 & 14 *C.* 2. *c.* 26. § 5.—And every cheesemonger and other, who shall sell any kilderkin, firkin, pot, or other cask of butter, shall deliver therein the full quantity and due quality, or shall be liable to make satisfaction according to the price thereof. § 3. And no cheesemonger or other person, shall repack for sale, any butter in any kilderkin, firkin or other cask, or pot, on pain of forfeiting double value thereof; to be recovered and applied in like manner. § 4. The prosecution for the offences above, shall be commenced in four months after the sale of the butter. § 7. But no seller of butter shall be charged with any of the said penalties, after the buyer hath approved thereof. 4 *W.* *c.* 7. § 2. And for preventing any fraud in the seller, after the factor or buyer hath bought the butter, the said factor or buyer shall set his seal, or mark, or name upon it, or upon the cask; and if it shall afterwards be exchanged or opened, and the cask changed, or any bad butter mixed or packed up with good butter, or any other fraud be committed by the seller, and he be convicted thereof before one justice, by oath of one witness, or confession, he shall forfeit twenty shillings for every firkin and offence, to be levied by the constable, by distress, and to be distributed by the justice, half to the churchwardens and overseers for the use of the poor, and half to the informer. 4 *W.* *c.* 7. § 2. But any person aggrieved may appeal to the sessions, giving £20 bond to the party to pay costs in a month after, if he is not relieved on his appeal. *id.* § 10.

Concerning ingrossing and regrating of Butter and Cheese.

There is nothing relating to the forestalling of butter and cheese different from the forestalling of goods, which may be seen under the general title of "Forestalling," but as to ingrossing and regrating the same, by stat. 3. *c.* 4. *Ed.* 6. *c.* 21. no person shall buy to sell again, any butter or cheese, unless he sell the same again by retail in open shop, fair or market, (or victuallers in their houses) and not in gross, on pain of double value, half to the King and half to the informer; and the word *retail* shall be taken only where a weight of cheese (viz., 225lbs. in some places 256, in others 356. *Dalt.* *c.* 112) or a barrel of butter, or less quantity, and not above, shall be sold at any time to any person or persons: and by stat. 5 & 6 *Ed.* 6. *c.* 14. whosoever shall in-

gross or get into his hands any butter or cheese, to sell the same again, shall be deemed an ingrosser. § 3.

BUTCHERS.

No person using the trade of a butcher, shall sell, offer or expose to sale, by himself or any other, any fat oxen, steers, runts, kine, heifers, calves, sheep, or lambs, alive, on pain of forfeiting double value; half to the king and half to him that will sue. 15. *C.* 2. *c.* 8.

If any butchers shall conspire not to sell their victuals but at certain prices, every such person shall forfeit for the first offence £10. to the King, and if not paid in six days, he shall suffer twenty days imprisonment, and shall only have bread and water for his sustenance: for the second offence £20. in like manner, or the pillory; and for the third offence £40. or pillory, and the loss of an ear, and to be taken as a man infamous and not to be credited in any matter of judgment, and the sessions or leet may determine the same. 2 & 3 *Edw.* 6. *c.* 15.

A butcher that selleth swines flesh meazled, or flesh dead of the murrain, shall for the first time be grievously amerced; the second time suffer judgment of the pillory; the third time be imprisoned and make fine, and the fourth time forswear the town. Ordinance for butchers. *Haw. stat.* V. 1. *p.* 181.

If any butcher shall kill or sell any victual on the Lord's day, he shall forfeit six shillings and eight pence, one-third to the informer and two-thirds to the poor, on conviction before one justice, on his own view or confession, or oath of two witnesses, to be levied by the constable or churchwarden. 3 *C. c.* 1. No butcher shall water any hide except in June, July and August, on pain of three shillings and four pence for each offence, 1. *J. c.* 22. § 2.; one-third to the King, one-third to the informer, and one-third to the town or lord of the liberty. § 46. And the sessions may hear and determine the same. § 50. Or any two justices near the place may (in three months after the offence committed,) summon the party accused and the witnesses, and upon the party's appearance, or contempt in not appearing, on proof of notice given, may examine the witnesses on oath, and give judgment, and issue warrants under their hands, to levy the penalty by distress; and if not redeemed in six days the same to be sold: they may also mitigate the penalties, so as they reduce them not to less than a fourth part over and above the costs and charges: and any person aggrieved may appeal to the next sessions, who may finally determine the same, and in cases of conviction issue warrants for levying the penalties. 9 *An. c.* 11. § 36. No butcher shall put to sale any hide putrified or rotten, on pain of three shillings and four pence

for each offence, in like manner. 1. *J. c.* 22. § 2. No butcher shall be a tanner or currier, on pain of six shillings and eight pence a day, to be recovered and levied in like manner. 1. *J. c.* 22. § 2. 25. If any raw-hide shall wilfully or negligently be gashed in the flaying thereof, or being gashed, be offered to sale by any butcher or other, the offender shall forfeit two shillings and six pence for such hide, and one shilling for a calf skin; half to the poor and half to the informer, to be levied by two justices in like manner. 9. *An. c.* 11. § 11.

CALENDAR OF PRISONERS.

By 3 *Hen.* 7. *c.* 3. The sheriff shall certify a list of the prisoners in his custody to the justices of gaol delivery, for the purpose of being calendared.

CAPITAL PUNISHMENT.

By statute 7 *G.* 4. *c.* 3. The court upon the trial of capital offences (excepting murder) if it shall think the offender a proper subject for the royal mercy, may, instead of passing sentence of death, order the same to be recorded, which shall have the like effect as are prieve; and by statute 3 *W.* 4. *c.* 4. the preamble of which recites "that it is fit that it should be plainly declared in the statutes of this province, for what crimes offenders shall be liable to be punished with *death*, and that it does not seem to be indispensible for the security and well being of society, that the punishment of death should be inflicted in any other cases than those hereinafter mentioned, "it is therefore enacted that persous convicted of the following offences shall suffer death as felons, viz.—1. high treason; 2. murder; 3. petit treason; 4. rescuing persons convicted of murder or committed for murder; 5. rape; 6. carnal knowledge of a girl under the age of ten years; 7. sodomy; 8. robbery of the person; 9. robbing the mail; 10. burglary; 11. arson; 12. accessories before the fact to any capital offence; 13. rioters to the number of 12 or more remaining after proclamation to disperse pursuant to the 1 *G.* 1. *c.*, or committing other offences mentioned in that act; 14. burning the king's naval stores in any dock-yard."

CARRIERS.

No Carrier with any horse or horses, nor waggonman, carman, or wainman, with their respective carriages, shall by themselves, or any other, travel on the Lord's day, on pain of twenty shillings, on conviction, in six months, before one justice or mayor, on view

or confession, or oath of two witnesses, to be levied by the constable or churchwardens, by distress, to the use of the poor, and one shilling and three pence to the informer, at discretion of the justices. 3. *C. c.* 1. (See *post Lord's day.)*

It has been held, that a carrier embezzling goods which he has received to carry to a certain place, is not guilty of felony, because there was not a felonious taking, but is liable only to a civil action. 1 *Haw.* 89. 90. But if a carrier open a pack and take out part of the goods, with intent to steal it, he may be guilty of felony, in which case it may be said, not only that such possession of a part distinct from the whole, was gained by wrong, and not delivered by the owner, but also that it was obtained basely, fradulently and clandestinely, in hopes to prevent its being discovered at all, or fixed upon any one when discovered. 1 *Haw.* 90. So if a carrier, after he has brought the goods to the place appointed, take them away again secretly, with intent to steal them, he is guilty of felony, because the possession which he received from the owner being determined, his second taking is in all respects the same as if he were a mere stranger. 1 *Haw.* 90. And if goods be delivered to a carrier, to be carried to a certain place, and he carries them to another place, and disposeth of them to his own use, this is felony, because this declareth that his intention originally was not to take the goods upon the agreement and contract of the party, but only with a design of stealing them. *Kelynge*, 82. Where goods are delivered to a carrier, and he is robbed of them, he shall be charged and answer for them, by reason of the hire; and generally, if a man delivers goods to a common carrier, to carry to a certain place, if he loses or damages them, an action *upon the case*, lies against him, for by the custom of the realm he ought to carry them safely. 1 *Bac. Ab.* 343. Where goods are stolen from a carrier, he may prefer an indictment against the felon, as for his own goods. *Kelynge*, 39.

CATTLE.

No person shall buy any ox, steer, runt, cow, heifer or calf, and sell the same again alive, in the same market or fair, on pain of forfeiting double value, half to the king, and half to him who shall sue. 3 & 4 *Ed.* 6. *c.* 19. 3 *C. c.* 4. § 7. 8. And if any person (except drovers licensed) shall buy any ox, runt, steer, cow, heifer, calf, sheep, lamb, goat or kid, living, and sell the same again alive, unless he keep and feed the same five weeks, he shall forfeit double value, half to the king, and half to him that shall sue in any court of record; and also the justices in sessions may determine the same by inquisition, presentment, bill or information, and by examina-

tion of two witnesses, and make process thereupon, as upon indictment, and make estreats for the King's moiety, and award execution of the other moiety for the complainant, by *fieri facias*, or *capias*, as the courts at Westminster may do. 5 & 6 *Ed.* 6. *c.* 14. § 9. 10.

By the 3 *C. c.* 1. no drover with any cattle shall travel on the Lord's day, on pain of twenty shillings, which may be levied by the constable or churchwarden, by warrant of one justice on conviction on his view, or by confession, or the oath of two witnesses; one-third to the informer, and two-thirds to the poor. (See *post Lord's day.)*

Killing or maiming of cattle, is made felony by the 9 *G.* 1. *c.* 22. commonly called the black act. *(See that title ante).* And for stealing of cattle, *(see larceny).*

Cattle running at large.

By statute 34 *G.* 3. *c.* 8. entitled, 'an act to restrain the custom of permitting horned cattle, horses, sheep and swine, to run at large,' it is enacted, that it shall not be lawful for such to run at large, otherwise than under the regulations to be made at town meetings. § 3. Any cattle trespassing shall be impounded, until the damages done and pound-keeper's fees are paid.

By stat. 43 *G.* 3. *c.* 10. § 1. upon any cattle being impounded the pound-keeper may feed the same, for which he shall be entitled to an allowance, to be regulated in quarter sessions. § 2. Within forty-eight hours after distress impounded, the pound-keeper shall cause notice thereof to be fixed in three of the most conspicuous parts of the township, giving a description therein of such distress, and when and where intended to be sold; and if the owner shall not, in fifteen days redeem the same, by paying the pound-keeper's charges, and the damages or penalty, (if any) at the place where the pound is kept, such pound-keeper may sell the distress, or a sufficient part thereof, and pay the amount due, returning the surplus to the owner. § 3. And if the owner shall not appear, or shall dispute the amount claimed, the pound-keeper shall apply to a neighbouring justice, who is authorised to summon three freeholders, to whom he shall administer an oath, well and truly to assess the damages, and the determination of the majority shall be conclusive; but this act not to restrain any right of action for making such distress.

By stat. 44 *G.* 3. *c.* 4. § 1. a penalty of twenty shillings is imposed upon the owner of any *ram* running at large, from the 1st of September till the 20th day of December, to be recovered upon the oath of any one witness, before one justice, and levied by dis-

tress and sale, one-half to the informer, and the other to the province. § 4. To prevent any difficulty from discovering the owner, any such ram running at large may be impounded, and notice fixed on the outside of such pound, and in some other conspicuous place of the township, signed by the impounder, (which notice shall be dated the day on which the same shall be affixed) of such ram being found at large contrary to law, and if the owner shall not within seven days after such notice, pay the fine of twenty shillings, together with the pound-keeper's fees, it shall be lawful for the person impounding, (having convicted the owner of such ram, of offending against this act) to sell such ram, and pay the said fine and charges, returning the overplus, if any, to the owner, and if insufficient, the proceeds shall be paid first in discharge of the pound-keeper's fees, costs and charges, and one-half of the remainder to the informer and the other to the province. § 5. Prosecution to be within eight days.

By 2 *G.* 4. *c.* 11. § 1. so much of the 43 *G.* 3. as relates to the towns of York, Niagara, Sandwich, Amherstburgh and Kingston, shall be repealed. § 2. Magistrates in quarter sessions for any district wherein a police in any town therein is established, may make and publish such prudential rules and regulations as they may deem expedient, for restraining swine running at large in any such town.

For the forms of proceeding see "Information, Summons, Conviction," none being prescribed by the acts above mentioned.

CENSUS.

By stat. 4 *G.* 4. *c.* 7. assessors chosen for any parish, township or place, shall take a correct list of all the inhabitants thereof, in the following form :—

NAMES of Heads of families	NUMBER IN EACH FAMILY.				TOTAL.
	Males, under 16.	Females, under 16.	Males, above 16.	Females, above 16.	

And such assessors shall demand from every inhabitant householder, or head of family, a true list of the number of persons

composing such family, and their respective ages, including persons employed by or resident with such householder; and in case of refusal for ten days, shall forfeit 40s.

§ 3. Assessors shall subscribe such list, and deliver the same to the clerk of the peace before 1st April in each year, and make oath to the correctness of such list, before the clerk of the peace.

§ 4. Within ten days after the town meeting, the town clerk shall notify the persons chosen as assessors, and require them to take the oath prescribed for parish and town officers; and the town clerk shall transmit to the clerk of the peace, within twenty days after the town meeting, the names of the assessors, with an affidavit that he has duly notified them of their appointment, under a penalty of £3 for neglect.

§ 5. If the assessors neglect the duties imposed upon them, the clerk of the peace shall cause them to be summoned, by one justice, to appear at the next sessions; and if convicted, or neglect to appear, the court shall impose on them a fine, not exceeding £10, nor less than £5.

§ 6. In case the assessors chosen at the town meeting shall neglect or refuse to serve; or in case of vacancy, by death or sickness, the justices at any adjourned or special sessions, may appoint others; and their appointment shall be notified by the clerk of the peace; and the assessors so appointed shall incur the like responsibility for neglecting to take the oath, or for any other neglect of duty, as assessors chosen at town meetings.

§ 7. The clerk of the peace shall make a general return of the population, and transmit same to the lieutenant governor.

§ 8. The clerk of the peace and assessors shall be entitled to the following fees, to be paid by the treasurer of the district, viz.:

Clerk of the peace, for each return,.....	£1	0	0
The assessor, for every £100 upon the assessment roll, in addition to other remuneration afforded by law,.....	3	0	0
Town clerk, for every notification,.....	0	5	0

But the assessors shall not receive any fee or reward until the population return shall be filed with the clerk of the peace, and a certificate produced to the treasurer.

§ 9. Fines and forfeitures imposed by this act, except as herein otherwise provided, shall be recovered before any two justices, on the oath of one witness, and may be levied by distress and sale, by justice's warrant; and one half of the fines shall be paid to the informer, and the other to the treasurer, for the use of the district.

For the forms of information, conviction, and other proceedings under this act, see general titles "information," "summons," "conviction," "distress warrant,"—the act not having prescribed any particular forms.

CERTIORARI.

A certiorari is an original writ issuing out of the court of chancery or the king's bench, directed in the king's name to the judges or officers of inferior courts, commanding them to certify or to return the records of a cause depending before them, to the end the party may have the more sure and speedy justice before the king or such justices as he shall assign to determine the cause, 1 *Bac. abr.* 559. and no proceedings of any court of criminal jurisdiction can be removed into a superior court, but by a writ of error or *certiorari*, 2 *Haw. c.* 1. § 14.

A certiorari lies in all judicial proceedings, in which a writ of error does not lie, and it is a consequence of all inferior jurisdictions erected by act of parliament, to have their proceedings returnable in the king's bench. *L. Raym.* 469. 580. And therefore a certiorari lies to justices of the peace even in such cases which they are impowered by statute, finally to hear and determine; and the superintendency of the court of king's bench is not taken away without express words. 2 *Haw.* 286. But it seems agreed that a certiorari should never be granted to remove an indictment after a conviction, unless for some special cause; as when the judge below is doubtful what judgment to give. 2 *Haw.* 288. Also it seems a good objection against the granting a certiorari, that issue is joined in the court below and a *venire* awarded for the trial of it. 2 *Haw.* 288.

It hath been adjudged that wherever a certiorari is by law grantable for an indictment, the court is bound of right to award it, at the instance of the king, because every indictment is the suit of the king, and he has a prerogative of suing in what court he pleases. But it seems to be agreed, that it is left to the discretion of the court, to grant *or deny it at the prayer of the defendant.* 2. *Haw.* 287. And the court will not ordinarily at the prayer of the defendant grant a certiorari for the removal of an indictment for perjury, or forgery, or other heinous misdemeanor, for such crimes deserve all possible discountenance, and the certiorari might delay, if not wholly discourage the prosecution. 2 *Haw.* 287.

How to be granted and allowed.

1. On indictment or presentment: by statute 5 *W. c.* 11. and 8. & 9. *W. c.* 33. it is enacted "that in term time no writ of cer-

tiorari at the prosecution of any party indicted, shall be granted out of the king's bench to remove any indictment or presentment of trespass or misdemeanor before trial had from before the justices in sessions, unless such certiorari shall be awarded upon motion of counsel, and by rule of court made for the granting thereof. But in the vacation writs of certiorari may be granted by any justice of the king's bench whose name shall be indorsed on the writ, and also the name of the person at whose instance it is granted, and all the parties prosecuting such certiorari, shall before the allowance thereof, find two sufficient manucaptors who shall enter into a recognizance before a justice of the king's bench, (who shall indorse the same on the writ), or before a justice of the peace of the county or place, in the sum of £20, with condition at the return of the writ to appear and plead to the said indictment or presentment in the said court of king's bench, and at their own cost and charges to cause and procure the issue that shall be filed thereon, or any plea relating thereto, to be tried at the next assizes for the county wherein the indictment or presentment was found, after such certiorari shall be returned, or the next term, if in London, Westminster or Middlesex, unless the court shall appoint another time, and if so then, at such other time; and to give due notice of such trial to the prosecutor or his clerk in court, and also that the party prosecuting such writ of certiorari shall appear from day to day in the said court of king's bench, and not depart until he shall be discharged by the court.

And the said recognizance shall be certified into the king's bench with the certiorari and indictment to be there filed and the name of the prosecutor (if he shall be the party grieved,) or some public officer, shall be indorsed on the said indictment. And if the defendant prosecuting the writ of certiorari be convicted of the offence for which he was indicted, then the court of king's bench shall give reasonable costs to the prosecutor to be taxed according to the course of the said court, who shall for the recovery thereof within ten days after demand and refusal of payment, on oath, have an attachment awarded, and the recognizance shall not be discharged until the costs are paid. But if the person procuring the certiorari being the defendant, shall not before allowance thereof, procure such manucaptors to be bound as aforesaid, the justices may proceed to the trial of the indictment in sessions, notwithstanding the writ of certiorari delivered.

On a Conviction or Order.

By the 13 *G.* 2. *c.* 18. no certiorari shall be granted to remove any conviction, judgment, order or other proceedings, before any

justice of the peace, or quarter sessions, unless it be applied for *six calendar months* after such proceedings had or made, and unless it be duly proved upon oath, that the party suing for the same hath given six days notice thereof in writing, to the justice or justices, or two of them, (if so many there be) before whom such proceedings have been, to the end that such justices may shew cause, if they so think fit, against the issuing of the certiorari: and by *5 G. 2. c.* 19. no such certiorari shall be allowed to remove any such judgment or order, unless the party prosecuting the certiorari, before the allowance thereof, enter into a recognizance with sufficient sureties, before a justice of the county or place, or before the justices at sessions, where such judgment or order shall have been given or made, or before a justice of the king's bench, in £50. with condition to prosecute the same at his own costs and charges, with effect, without wilful delay, and to pay the party in whose favor the judgment or order was made, within a month after the same shall be confirmed, his full costs, to be taxed according to the course of the court where such confirmation shall be; and if he shall not enter into such recognizance, or shall not perform the conditions, the justices may proceed and make such further order, for the benefit of the party for whom the judgment shall be given in such manner, as if no certiorari had been granted: the said recognizance to be certified, into the king's bench, and then filed with the certiorari, and order or judgment removed thereby; and if the order or judgment shall be confirmed by the court, the person entitled to the costs for the recovery thereof, within ten days after demand made upon oath, of such demand and refusal of payment, shall have an attachment granted for the contempt, and the recognizance shall not be discharged till the costs are paid, and the order complied with.

E. 1. *An.* A rule was made in the court of king's bench, that no certiorari should be granted to remove orders of justices from which the law has given an appeal to the sessions, before the matter be determined on the appeal, because it hinders the privilege of appealing; and that if any order be removed before appeal, it should be sent down again. But if the time of appeal be expired, that case is not within the rule. By *Holt*, chief justice—but afterwards *M.* 4. *An.* in the case of *Skellington*, it was held that advantage must be taken of this rule, upon the motion to file the order, for that after it is filed it is too late. 1 *Salk.* 147.

The effect of it.

After a certiorari is allowed by the inferior court, it makes all the subsequent proceedings on the record, that is removed by it,

erroneous. 2 *Haw.* 293. But if a certiorari for the removal of an indictment before justices of the peace be not delivered before the jury be sworn for the trial of it, the justices may proceed. 2 *Haw.* 294. And the justices may set a fine, to complete their judgment, after a certiorari delivered. 4 *Ray.* 1515. A certiorari removes all things done between the *teste* and *return*. 4 *Ray.* 835. 1305.

The return of it.

Every return of a *certiorari* ought to be under seal. 2 *Haw.* 294. And although the *custos rotulorum* keep the records, yet must the justices to whom it is directed return the certiorari; and therefore, if it is directed to the justices of the peace, and the clerk of the peace, only, return it, nothing is thereby removed. 2 *Haw.* 294. The certiorari may be sometimes to remove and send up the record itself, and sometimes but only the tenor of the record, (as the words therein be) and it must be obeyed accordingly. *Dalt. c.* 195. 2 *Haw.* 295.

If the person to whom a certiorari is directed, do make a false return, yet the court will not stay filing it on affidavit of its being false, except in public cases, as in commissioners of sewers, or for not repairing highways, or for some such special causes, because the remedy for a false return is either an action on the case, at the suit of the party grieved, or an information, at the suit of the King. *Dalt. c.* 195. If the person to whom the certiorari is directed, do not make a return, then an *alias*, that is, a second writ; then a *pluries*, that is, a third writ, or *causam nobis significes* shall be awarded; and then an attachment. *Crom.* 116.

The return of a certiorari may be thus:—

On the back of the writ indorse these words, or the like—"The execution of this writ appears in a schedule to the same writ annexed." And that schedule may be thus, on a piece of parchment, by itself, and filed to the writ:

Home District. } I, —— esquire, one of the keepers of the peace, and justices of our Lord the King, assigned to keep the peace within the said district, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the same district committed, by virtue of this writ to me delivered, do, under my seal, certify unto his Majesty, in his court of king's bench, the indictment or conviction of which mention is made in the same writ, together with all matters touching the same. In witness whereof, I the said —— have to these presents set my seal. Given at —— in the said district, the —— day of —— in the —— year of the reign of his majesty king ——.

Then take the record of the said indictment, and close it within the schedule, and seal and send them up both together with the certiorari.

Recognizance on Certiorari.—(Toone.)

Home District, } Be it remembered, that on the —— day of —— to wit. } in the year of the reign, &c. A. B. of ——; C. D. of ——; and E. F. of ——, came before me, J. C. esquire, one of the keepers of the peace, and justices of our lord the King in and for the home district, and acknowledged to owe to our sovereign lord the King, the sum of £50, of lawful money of Great Britain, to be levied upon their goods and chattels, lands and tenements, to his Majesty's use, upon condition, that if —— shall prosecute with effect, without any wilful or affected delay, at his own proper costs and charges, a writ of certiorari, issued out of the court of our said lord the King, before the King himself, at Toronto, to remove into the said court all and singular the records of conviction, of whatever trespasses and contempts, against the form of the statute made and passed in the —— year of his Majesty's reign, entitled "an act, &c." whereof the said —— is convicted before me J. C. esquire, one of the keepers of the peace and justices of our said lord the King, in and for the —— district, and shall pay to the prosecutor, within one month next after the said record of conviction shall be confirmed in the said court, all his said full costs and charges, to be taxed according to the course of the said court; then this recognizance to be void, or else to remain in full force. Taken and acknowledged, the day and year first above said. J. C.

CHAINS.

By Statute 25 *G.* 2. *c.* 37. § 5. any judge may appoint the body of a criminal convicted of murder, to be hung in chains.

CHALLENGE TO FIGHT.

A challenge to fight a duel is a high offence at law; or even an endeavour to provoke another to send a challenge; and the messenger or bearer of a challenge is equally culpable with him who sends it. 1 *Haw. c.* 63. § 3. 3 *Inst.* 158. 4 *Bl. Com.* 150. It is no excuse that the challenge is given under provocation, for if one person were to kill another in a deliberate duel, though under provocation, it would be *murder* in him and his second. *R. v. Rice*, 3 *East.* 581. Where the provocation consisted in sending an abusive letter, it was held to be an *indictable offence*, and

the act of *sending* such a letter, was held to be an *act done* towards procuring the commission of the misdemeanor meant to be accomplished. *R. v. Phillips*, 6 *East.* 464. So, words spoken, which tend to a breach of the peace, are equally indictable, such as words conveying an express challenge, or a threat to beat another. *R. v. Langley*, 6 *Mod.* 125. 2 *Ld. R.* 1031. And so, any words, which are evidently intended to provoke a party to *give* a challenge: it has been considered, however, that such words as *liar* and *knave*, do not tend immediately to a breach of the peace, though they are motives and *mediate* provocation for a breach of it. *King's case*, 4 *Inst.* 181.

The punishment for this offence is discretionary by *fine* and *imprisonment*, and is guided by such circumstances of aggravation, as appear in each particular case. 1. *Haw. c.* 63. § 21. *Rex. v. Rice*, 3 *East.* 384.

Indictment for sending a Challenge. (Archbold.)

Home District, } The jurors for our lord the King upon their oath
to wit. } present, that J. S. late of the township of —— in the county of —— in the home district, gentleman, being a person of a turbulent and quarrelsome temper and disposition, and contriving and intending not only to vex, injure and disquiet, one J. N. and to do the said J. N. some grievous bodily harm, but also to provoke, instigate and excite the said J. N. to break the peace, and to fight a duel with and against him the said J. S. on the —— day of —— in the —— year of the reign of our sovereign lord William the fourth, at the township aforesaid, in the county and district aforesaid, wickedly, wilfully and maliciously did write, send and deliver, and cause and procure to be written, sent and delivered, unto him the said J. N. a certain letter, and paper writing, containing a challenge to fight a duel with and against him the said J. S. and which said letter and paper writing is as follows, *(here set out the letter with such innendoes as may be necessary,)* to the great damage, scandal and disgrace of the said J. N. in contempt of our lord the King and his laws, and against the peace of our lord the King, his crown and dignity.

2nd count. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S. contriving and intending as aforesaid, afterwards, to wit, on the day and year aforesaid, with force and arms, at the township aforesaid, in the county and district aforesaid, wickedly, wilfully and maliciously, did provoke, instigate, excite and challenge the said J. N. to fight a duel with and against him the said J. S. to the great damage, scandal and disgrace of the said J. N. in contempt of our lord the King and

his laws, and against the peace of our lord the King his crown and dignity.

CHAMPERTY.

CHAMPERTY is a bargain made with a plaintiff or defendant in any suit, to have part of the land, or debt, or other thing sued for, if the party litigant prevails in the action or suit, the *champertor* agreeing to carry on the suit at his own expense; it amounts, in fact, to a purchase of the suit; a practice which, *Blackstone* says, is so much abhorred by our law, that it is one main reason why a *chose in action* is not assignable at common law, because no man should purchase any pretence to sue in anothers right. 4 *Bl. Com.* 135. This offence is a species of maintenance, and punishable by fine and imprisonment. *Ibid.*

CHANCE MEDLEY.

CHANCE MEDLEY is where homicide is committed by a man upon a sudden affray, in his own defence. 4 *Bl. Com.* 184. The true criterion between *chance medley* and *manslaughter*, seems to be this,—where both parties are actually combatting at the same time when the mortal stroke is given, the slayer is then guilty of manslaughter; but if the slayer hath not begun to fight, (or having begun) endeavours to decline any further struggle, and afterwards, being closely pressed by his adversary, kills him to avoid his own destruction, this is *chance medley*, or homicide excusable by *self-defence*. *Ibid.* The party assaulted, therefore, in order to excuse himself in killing his assailant, must flee from him as far as he conveniently can, either by reason of some wall or ditch, or other impediment, or as far as the *fierceness* of the assault will permit him; for it may be so fierce as not to allow him to yield a step without manifest danger of his life, or enormous bodily harm, in which last predicament he may, in his own defence, kill his assailant instantly. 1 *Hale, P. C.* 483.

The penalty anciently inflicted on any one who had committed *chance medley*, seems to have been a forfeiture of a portion of the goods and chattels of the party, by way of fine. *Fost.* 287; which however was remitted to him, as a matter of course, on his suing out, and paying for a writ of restitution. 2 *Haw.* 381. But to prevent this expense, in cases where the death has happened notoriously, by misadventure or in self-defence, the judges now always direct a general verdict of acquittal. *Fost.* 288. 4 *Bl. Com.* 188. *Note* (1.)

CHEATS.

By the Common Law.

CHEATS, which are punishable by the common law, may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice; or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by persuading a woman to execute writing to another, as her trustee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment; or by suppressing a will, and such like. 1 *Haw.* 188.

On an indictment against the defendant, a miller, for changing corn delivered to him to be ground, and giving bad corn instead of it, it was moved to quash the same, because it was only a private cheat, and not of a public nature. It was answered, that being a cheat in the way of trade, it concerned the public, and therefore was indictable, and the court unanimously agreed not to quash it. *T.* 16. *C.* 2. *K.* and *Wood. Sess. C. W.* 1. 217.

The selling of unwholesome provisions is a fraud indictable at common law. 4 *Bl. Com.* 162. 2 *East. P. C.* 822. *R. v. Johnston*, 6 *East.* 133.

Where a person who was committed to gaol under an attachment for a contempt in a civil action, counterfeited a pretended discharge, (as from his creditor) to the sheriff and gaoler, under which he obtained his release from gaol, it was held that this was a cheat and misdemeanor at common law, in thus effecting an interruption to public justice. *R. v. Fawcett*, 2 *East*, *P. C.* 862. 952. Public officers are also indictable for frauds committed in their public capacities; thus, where two persons enabled others to pass their accounts with the pay office, in such a way as to defraud the government, they were held to be indictable for the fraud. *R. v. Bambridge*, *Cit.* 6. *East.* 136. A surveyor of the highways may be indicted for converting to his own use, gravel which had been dug at the expense of the inhabitants of the parish, and for employing for his own private gain and emolument, the labourers and teams of the parishioners, which he ought to have employed in repairing the highways. 3 *Chit. C. L.* 666. So also, any fraud which is practised on the public by means of *false weights*, or *measures*, or any *false token*, having the semblance of public authority, and purposely calculated for deceit, and by which the public may be imposed upon, without any imputation of folly or negligence, is indictable at common law. 2 *East. P. C.* 820. As,

where a person sells corn in a bushel short of the statute measure, or puts something into the bushel to help to fill it up. *R. v. Pinckney*, 2 *East. P. C.* 820. There appears, however, to be this distinction—where a man sells by *false* weights or measures, it is an indictable offence, but if *without false* weights or measures, he sells merely a less quantity than he pretends to sell, he is not then indictable, but liable only in an action for the deceit. *R. v. Young*, 3. *T. R.* 104. *per Buller, J. R. v. Nicholson, Cit.* 2. *Burr.* 1130. *R. v. Driffield, say.* 146.

By Statute.

By stat. 33 *H.* 8. *c.* 1. If any person shall falsely and deceitfully obtain, or get into his hands or possession, any money, goods, chattels, jewels or other things, of any person, by colour and means of any *false privy token* or *counterfeit letter*, made in another man's name, and shall be convicted thereof, by examination of witnesses, or confession, at the assizes or sessions, or by action in any court of record, he shall have such punishment by imprisonment, pillory or other corporal pain, (except death) as the court shall appoint, saving to the party grieved such remedy by action or otherwise, for the goods so detained, as he might have had by the common law; and two justices may call and convent by process or otherwise, to the assizes or sessions, any person suspected, and commit or bail him to the next assizes or sessions.

By stat. 30 *G.* 2. *c.* 24. all persons who knowingly and designedly, by false pretences, shall obtain from any person, goods, wares or merchandizes, with intent to cheat or defraud any person of the same, or shall knowingly send or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, letter or letters, threatening to accuse any person of any crime punishable by law with death, transportation or pillory, or any other infamous punishment, with intent to extort from him any money or other goods, shall be deemed offenders against law and the public peace; and the court before whom any such offender shall be tried, shall, on conviction, order him to be fined and imprisoned, or to be put into the pillory, or publicly whipped, or to be transported as soon as conveniently may be for seven years. § 1. And any justice before whom any person charged on oath, with having committed any of the offences intended by this act to be punished, shall be brought, shall examine by oath, and such other lawful means as to him shall seem meet, touching the matters complained of, and deal with the offender according to law; and if the party charged as being the offender, shall be committed to prison or admitted to bail, to answer the matters complained of, at the

next sessions or assizes, the said justice shall bind over the prosecutor to appear and prosecute such offender, with effect; and if such goods so fraudulently obtained, appear to such justice to exceed the value of £20. the recognizance shall be in not less than double the value of the goods. § 2. And if any person shall knowingly and designedly pawn, or exchange, or unlawfully dispose of the goods of any other person, not being employed or authorised by the owner so to do, shall be thereof convicted by the oath of one witness, or confession before one justice, he shall forfeit twenty shillings, and if not forthwith paid, the said justice shall commit him to the house of correction, or some other public prison of the place where he shall reside or be convicted, there to remain and be kept to hard labour for fourteen days, unless the forfeiture be sooner paid; and if within three days, before the expiration of the said fourteen days, the said forfeiture shall not be paid, the said justice, upon application of the prosecutor, shall order him to be publicly whipped in such house of correction or prison, or in some open public place of the city, division, town or place, wherein the said offence shall have been committed, as to such justice shall seem proper: the said forfeitures, when recovered, to be applied towards making satisfaction thereout to the party injured, and defraying the costs of the prosecution, as shall be adjudged reasonable by such justice; but if the party injured shall decline to accept of such satisfaction or costs, or if there be any overplus of the same, then such forfeitures or overplus shall be for the use of the poor &c.

Warrant of two Justices to apprehend an Offender, on the 33 *H.* 8. *c.* 1. (Burn.)

Home District, } To the Constable of —— in the said district.
to wit. } Whereas complaint hath been made unto us whose names and seals are hereunto set, two of his majesty's justices of the peace for the said district, upon the oaths of A. I. of —— yeoman, and B. I. of —— yeoman, that on the —— day of —— A. O. of —— yeoman, did by a false privy token, [or counterfeit letter] that is to say, by [here particularize the offence] falsely and deceitfully obtain and get into his hands and possession, [here mention the things] from C. I. of —— contrary to the statute in that case made. These are therefore to command you, upon sight hereof, forthwith to bring the said A. O. before us at —— to answer to the said complaint, and further to be dealt with according to law. Given under our hands and seals the —— day of ——.

CHILDREN.

A CHILD under ten years of age cannot be punished for any capital offence, whatever circumstances of a mischievous nature may appear. *Moir. c.* 4 § 6. *Plowd.* 19. 1 *Hale*, 20. *Fost.* 349. 4 *Bl. Com.* 23. *Cowp.* 222. 3.

From a supposed imbecility of mind, the protective humanity of the law will not, without anxious circumspection, permit an infant under 14 to be convicted on his own confession. *Cro. Jac.* 446. 1 *Hale*, 24. *Fost.* 70. Yet, if it appear, by strong and pregnant evidence and circumstances, that he was perfectly conscious of the nature and malignity of the crime, a jury may then find him guilty, and judgment of death may be given against him. 1 *Hale*, 20. 25. 434. *Fost.* 71. 4 *Bl. Com.* 23. *O. B.* 1784. *p.* 971. On the attainment of 14 years of age, the criminal actions of infants are subject to the same mode of construction as those of the rest of society; for the law presumes that the human mind has acquired at this period a complete sense of right and wrong. *Doct. & St. c.* 26. *Co. Lit.* 79. 171. 247. *Dalt.* 476. 505. 1 *Haw. c.* 1. *(note* 1.*)*

See post ORPHAN CHILDREN.

CHURCHWARDENS.

BY stat. 33 *G.* 3. *c.* 2. § 7. it is enacted, that as soon as there shall be any church built for the performance of divine service according to the use of the church of England, with a parson or minister duly appointed thereto, then the inhabitant householders shall choose and nominate one person, and the said parson or minister shall nominate one other person, which persons shall jointly serve the office of churchwarden; and that such churchwardens, and their successors, duly appointed, shall be as a corporation to represent the inhabitants of the township or parish, and as such may have a property of goods or chattels of the parish, and may sue or defend in all presentments, indictments or actions, for the inhabitants of said parish. § 7. A list of the persons so nominated shall, forthwith, be communicated to a magistrate of the division, who may swear the same into office.

Form of the Oath.

You, A. B. do promise and swear, that you will faithfully, diligently and justly, serve and perform the office and duties of churchwarden, for the parish (or township) of ——, according to the best of your abilities.—So help you God.

And every person having taken such oath shall be held to be lawfully appointed.

§ 9. A penalty of 40s. is imposed upon any person neglecting or refusing to signify his consent to enter upon such office, and to take the oath, within 7 days after such nomination; and any two justices may hold a special session for the purpose of naming others to serve the office, whose neglect or refusal to serve will be liable to the same penalty.

CLERGY RESERVES.

(The origin of this description of property will be found in the Constitutional Act of 31 *G.* 3. *c.* 31.—*See post* CONSTITUTIONAL ACT.)

BY stat. 59 *G.* 3. *c.* 7. § 2. crown and clergy reserves actually leased to individuals, shall be liable to the same rates and assessments as other lands; but no greater interest shall be sold for arrears than is possessed by the lessees. 6 *G.* 4. *c.* 7. § 15.

By stat. 7 & 8 *G.* 4. *c.* 62. the lieutenant governor, with the consent of the executive council, in pursuance of any instructions that may be issued through the secretary of state, may sell, alienate and convey, in fee simple, or for any less estate, a part of the clergy reserves, (not exceeding 100,000 acres) upon such conditions as his Majesty, by such instructions, shall direct; and the monies arising from such sales shall be invested in the public funds of Great Britain, and the interest appropriated to the improvement of the remaining part of the said reserves.

CLERK OF THE PEACE.

THE clerk of the peace is an officer belonging to the sessions of the peace; and his duty is to read indictments, enrol the proceedings, draw the process, and record other matters which appertain to the jurisdiction of the quarter sessions. He also certifies into the court of king's bench transcripts of indictments, outlawries, attainders, and convictions had before the justices of the peace within the time limited by any writ of *certiorari* directed to the justices to return such proceedings; and he ought to be an able and sufficient person residing in the county or division for which he is appointed. *Deacon's C. L.* 246.

The clerk of the peace is appointed by the lieutenant governor, by commission under the great seal of the province, and holds his office *quamdiu se bene gesserit.* He may also execute his office by deputy. 37 *H.* 8. *c.* 1.

By stat. 1 *W. & M. c.* 21. § 6. if he shall misdemean himself in office, and a complaint in writing be exhibited against him to the justices in sessions, the justices may, on examination and due proof thereof, suspend him from his office; and before entering upon the execution of his office, must take the following oath, besides the oaths of allegiance, supremacy and abjuration. § 8.

I A. B. do swear, that I have not, nor will pay any sum or sums of money, or other reward whatsoever, nor give any bond or other assurance, to pay any money fee or profit directly or indirectly, to any person or persons, whomsoever for such nomination and appointment. So help me God.

Duties of his Office. (DICKENSON.)

The Clerk of the peace by himself, or his sufficient deputy, must be in constant attendance on the court of quarter sessions. He gives notice of its being holden or adjourned; issues its processes; records its proceedings, and does all the ministerial acts necessary to give effect to its decisions. It is his duty when prosecutors do not choose to seek professional assistance, to draw bills of indictment. In the actual course of the sessions it is his duty to read the acts directed to be read in sessions; to call the jurors and make known their defaults and excuses to the courts; to call the parties under recognizance, whether to prosecute, plead or give evidence; to present the bills to, and receive them from the grand jury; to arraign prisoners; to receive and record verdicts; to administer all oaths, and make true entries of all proceedings. By an ancient statute, he is bound to certify to the court of king's bench, the names of such as shall be outlawed, attainted, or convicted of felony; and if he shall discharge or conceal any fine or forfeiture, unless by rule of court, he is liable to forfeit treble value, half to the king and half to him that shall sue, to lose his office, and be incapacitated ever to hold any office connected with the revenue. 22 23 *Car.* 2. *c.* 22. § 9. Neither he, nor his deputy, may act as solicitor, attorney or agent, or sue out any process at any general quarter sessions, where he shall execute the office of clerk of the peace, or deputy, on pain of £50. 22 *G.* 2. *c.* 46. § 4.

His duties also by Provincial Statutes.

To register recognizances of inn-keepers, and to make a return to the quarter sessions yearly. 34 *G.* 3. *c.* 12. § 6.; and to cause the names of persons under recognizance to be affixed in two public places in the district. *Ib.* To transmit quarterly to the inspector general, a statement of the rate of duties for licenses, under the order of sessions. 59 *G.* 3. *c.* 2. § 7. To return to the lieu-

tenant governor's office, certified copies of returns of population, as given in by the town clerks. 60 *G.* 3. *c.* 2. § 3. 4 *G.* 4. *c.* 8. § 7. To receive the assessment lists from the assessors, and lay the same before the quarter sessions. 59 *G.* 3. *c.* 7. § 7. To transmit to the lieutenant governor, before the end of January in each year, an aggregate account of all property assessed. *Ib.* § 17. To make out writs to the sheriff for levying the arrears of assessments, by the sale of a portion of the lands on which rates are charged, if no distress can be found thereon. 6 *G.* 4. *c.* 7. § 7.; such writs to be returnable at the third quarter sessions ensuing the issuing thereof. § 8. To give notice, within eight days, to persons chosen parish and town officers by quarter sessions, when no town meetings held, to take the oath of office within eight days. 46 *G.* 3. *c.* 5. § 3. The constable being bound to serve such notice, when required to do so by the clerk of the peace. § 4. To grant certificates *gratis* from the records of any conviction or pardon granted. 40 *G.* 3. *c.* 1. § 6. To deliver to the sheriff annually, a list of jurors duly classed. 34 *G.* 3. *c.* 1. § 1. To read the 45 *G.* 3. *c.* 2. (heir and devisee act) at every quarter sessions. § 14. To certify claims of heirs and devisees. § 8. To make out a list of land claims every three months, and affix it publicly in the court-house. 48 *G.* 3. *c.* 10. § 6. To transmit to the sheriff, annually, before the 15th July, a list of persons assessed for £200. and upwards. 48 *G.* 3. *c.* 13. § 3. To record roads that have passed at quarter sessions. 50 *G.* 3. *c.* 1. § 1. To transmit to the inspector general, on or before the 1st May and 20th February, annually, lists of all licenses issued. 56 *G.* 3. *c.* 3. § 5.

The clerk of the peace should also make a return to the crown officers, of all forfeited recognizances, in order that the parties in default may be prosecuted thereon. He is *virtually* also the *custos rotulorum*, or keeper of the records of the district.

Sessions Fees due to the Clerk of the Peace, and to be paid out of the District Funds. 47 *G.* 3. *c.* 11.

Drawing the precept, and attending commissioners to sign the same, and transmitting it to the sheriff,....	£1	0	0
Attending each quarter sessions,.....	1	10	0
Making up the records of each sessions,.....	2	10	0
Notice of every appointment,.....	0	1	0
List of jurors, every 100 names,.....	0	2	6
Making up estreats of each session, and transmitting same to the inspector general,.....	0	5	0

To be paid by the Parties.

Every recognizance for the peace or good behaviour,.	£0	5	0
For discharging the same,.....	0	2	6
Subpœna,.....	0	2	6
Bench warrant,.....	0	5	0
Drawing indictment,.....	0	10	0
Allowance of certiorari,.....	0	5	0

Sec. 2. This act not to deprive the clerk of the peace of such other fees as are allowed by act of parliament, for other services.

Other Fees to be taken by the Clerk of the Peace.

On each assessment, 59 *G.* 3. *c.* 7. § 7.....	£1	10	0
For aggregate account of assessments, transmitted to lieutenant governor, 59 *G.* 3. *c.* 7. § 17.....	1	10	0
For each writ for levying rates in arrear, by sale of lands, 6 *G.* 4. *c.* 7. § 25.....	0	10	0
For each certificate of Dower, 37 *G.* 3. *c.* 7. § 2. 50 *G.* 3. *c.* 10. § 2.....	0	5	0
For each certificate of alienation, of real estate, by femmes covert, 2. *G.* 4. *c.* 14. § 2.....	0	5	0
For certificates to ministers of church of Scotland, to authorise their marrying, 38 *G.* 3. *c.* 4. § 2.....	0	5	0
For certifying notices, under the heir and devisee act, 45 *G.* 3. *c.* 2.....	0	2	6
For transmitting lists of licenses to inspector general, on the 1st May and 20th February, annually, 56 *G.* 3. *c.* 3. § 5. for each list.....	1	10	0

Form of appointment of a Deputy.

I, A. B. clerk of the peace in and for the home district, do hereby make, substitute and appoint, C. D. of —— in the said district, gentleman, my true and lawful deputy, in the office of clerk of the peace for the said district, so long as I shall hold the same, and during the continuance of my will and pleasure. Witness my hand and seal, this —— day of ——18—.

COIN.

By stat. 36 *G.* 3. *c.* 2. Certain coins are made current in this Province, viz.:—the British guinea at £1. 3s. 4d., the johannes of Portugal at £4., the moidore of Portugal at £1. 10s., the American eagle at £2. 10s., the British crown at 5s. 6d. the British shilling at 1s. 1d. the Spanish milled dollar at 5s. the Spanish pistareen

at 1s., the French crown at 5s. 6d., the French piece of four livres ten sols tournois at 4s. 2d., the French piece of 36 sols tournois at 1s. 1d., the American dollar at 5s. § 3. any person who shall color, gild, or case with gold or silver, or with any wash or materials producing the color of gold or silver, any coin of coarse gold or of base metal resembling such foreign coin, or who shall gild over any piece of silver resembling any such foreign coin; or who shall bring or cause to be brought into this province, any forged or counterfeited money like to the said foreign gold or silver coin, knowing the same to be forged or counterfeit; or any coin of coarse gold or silver, or base metal colored, gilded, or cased over with gold or silver, or with any wash, or materials producing the color of gold or silver, and resembling any such foreign coin, or any piece of gilded silver resembling any such foreign coin, knowing the same, shall be guilty of felony. § 4. Any person knowingly uttering or tendering in payment, any such false or counterfeited money, upon conviction, shall suffer one years' imprisonment, and be set in the pillory for one hour; and for a second offence be adjudged guilty of felony. § 5. Any person importing false or counterfeit brass or copper money, in order to sell or pass the same, shall be imprisoned at the discretion of the court of K. B. not exceeding twelve months, § 6. and such false or counterfeit brass or copper money may be seized and defaced in open court, or in the presence of a justice, § 9. any suspected gold, silver, or copper money, tendered in payment, may be cut, broken or defaced, by the person to whom it is tendered, but if found to be good, he shall receive the same at the rate it was coined for, § 10. and if any question shall arise whether it be false or counterfeit, it shall be determined by a justice, who, if he shall have any doubt, may summon three indifferent persons, the majority of whose opinions shall be final.—See also, 49 *G.* 3. *c.* 8. 7 *G.* 4. *c.* 4. 11 *G.* 4. *c.* 6.

Where a defendant was indicted for a misdemeanor, in having coining instruments in his custody, with *intention* to coin half guineas, shillings and sixpences, and to utter them as and for the legal current coin, the court held the offence to be a misdemeanor, and the conviction right; *Lee, C. J.* saying, that "all that was necessary in such a case, was an act charged and a criminal intention joined to that act." *Sutton's case, Rep. temp. Hardw.* 370. 2 *Str.* 1074. So will an indictment lay for making coining instruments, and having them in possession, with intent to make counterfeit money. *Brandon's case, Old Bailey*, 1698. Also, against a party for buying counterfeit shillings, with an intent to utter them for payment. *Cox's case, Old Bailey*, 1690. And so, having a large quantity, of counterfeit coin in possession, under suspicious circumstances and unaccounted for, is punishable as a

misdemeanor. *Rex. v. Fuller* and *Robinson*, *East. T.* 1816. *M. S. Bayley, J. Russ.* and *Ry.* 308.

Commitment for uttering Counterfeit Coin. (Toone.)

J. C. esq. one of the justices of our lord the King assigned to keep the peace within the *home* district, to the constable of —— in the said district, and to the keeper of the common gaol at —— in the said district.

Home District, } These are to command you, the said constable, in
to wit. } his Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of E. F. charged this day upon the oath of A. B. before me the said justice with having on the —— day of —— at —— in the said district, unlawfully and deceitfully uttered and paid to him the said A. B. one piece of false money, made and counterfeited to the likeness and similitude of a British crown, of the lawful and current money of this province; the said E. F. then and there knowing the said piece of money to have been false and counterfeit; and you, the said keeper, are hereby required to receive the said E. F. into your custody, in the said common gaol, and him there safely keep until he shall be from thence discharged by due course of law. Given under my hand and seal, &c. J. C.

COLLECTOR OF RATES.

By Stat. 33 *G.* 3. *c.* 2. § 4. one collector for each township is to be chosen at the annual town meeting, on the first Monday in March, (by the 57 *G.* 3. *c.* 7. § 2. altered to January) every year, who is to collect the rates. If he neglect or refuse to be sworn into office within seven days after his nomination, he shall pay a fine of forty shillings, to be recovered before one justice, upon proof by confession, or oath of one witness, and the same shall be levied by warrant of distress, and paid to the treasurer, towards the public stock of the district; and any two justices may hold a special sessions and appoint another to the office, whose neglect or refusal shall be subject to the like penalty. The collector is to pay over all monies received, once in three months, to the treasurer of the district, 53 *G.* 3. *c.* 9. § 1. and to give a bond with the following condition. § 2.

Form of Condition.

The condition of this obligation is such, that if the above bounden A. B. shall collect and levy all the rates and assessments of the township or townships of —— for the present year, ending on

the first Monday of January next, so far as the law may enable him so to do, and shall pay all the monies which he shall so collect and levy, to the treasurer of the said district, once in every three months, or oftener, if thereto required by the magistrates in general quarter sessions assembled, and if the said A. B. do well and truly collect and pay, by the different payments to be made as aforesaid, the whole amount of all monies received by him, on or beforet he 1st day of January next ensuing his appointment as collector, then this obligation to be void, or else in full force.

If the collector refuse to give such bond, the quarter sessions shall appoint another. 46 *G.* 3. *c.* 5. § 9. £5. per cent. allowed such collector on monies collected and paid over. § 11.

The clerk of the peace is required to furnish each collector with a certified copy of the assessment roll, which shall be a sufficient authority for the collector acting upon. 59 *G.* 3. *c.* 7. § 7. And if any person shall refuse to pay his rates for the space of fourteen days after demand made by the collector, the said collector is authorised to levy the same by distress and sale of the goods and chattels of the person so neglecting or refusing to pay, by warrant from a justice. § 9. And in cases where lands are unocupied, and no distress can be found, the collector for the time being, at any time after, may distrain for the rates, first obtaining a justice's warrant. § 13.

Information of the Collector to ground a Warrant of Distress for levying a Rate.

Home District. The information and complaint of A. B. of the township of —— in the home district, collector, taken on oath, this —— day of —— 18—, before me D. F. esq. one of his Majesty's justices of the peace for the said district. The said informant saith, that A. O. of the township of —— in the said district, yeoman, is duly rated in the assessment roll of the said township, for the year —— (a certified copy whereof is now produced) at the sum of —— and that he, this informant, did on the —— day of —— last, duly demand of the said A. O. the payment of the said rate, but that the said A. O. did not then pay the same, nor hath he at any time since paid the said rate, or any part thereof, to this informant, but that the same remains wholly in arrear and unpaid, and therefore this informant prayeth a warrant to levy the same, pursuant to the statute in such case made and provided.

Sworn before me.

Warrant of Distress.

Home District, to wit. } To A. B. collector of the township of —— in the Home District.

Whereas complaint in writing, hath this day been made and ex-

hibited to me D. F. esq. one of his Majesty's justices of the peace for the said district, by and upon the oath of A. B. collector of the said township, that A. O. of the said township, yeoman, having been duly rated, at the sum of £— in the assessment roll of the said township, for the year —— a certified copy whereof hath been exhibited and shewn to me the said justice, hath for the space of fourteen days and upwards, after demand thereof made by the said collector, neglected and refused to pay the said rate, and that the same is now wholly in arrear and unpaid. These are therefore to authorise and command you, forthwith to make distress of the goods and chattels of the said A. O. and if within the space of —— *(not less than four nor more than eight days; see* 27 *G.* 2. *c.* 20.) days after the making of such distress, the said sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do retain the sum of £—, in satisfaction of the said rate, together with the reasonable charges of distress and sale, rendering the overplus, on demand, unto the said A. O. Given under my hand and seal the —— day of —— in the —— year of the reign of our sovereign lord William the fourth, and in the year of our Lord 183 —.

COMMITMENT.

THERE is no doubt but that persons apprehended for offences which are not bailable, and also, all persons who neglect to offer bail for offences which are bailable, must be committed. 2 *Haw.* 116. and wheresoever a justice is impowered by any statute to bind a person over, or to cause him to do a certain thing, and such person, being in his presence, shall refuse to be bound, or to do such thing, the justice may commit him to the gaol, there to remain, till he shall comply. 2 *Haw.* 116. If a prisoner be brought before a justice, expressly charged with felony upon oath, the justice cannot discharge him, but must bail or commit him. 2. *H. H.* 121. But if he be charged with suspicion of felony only, yet if there be no felony at all proved to be committed, or if the fact charged as felony be in truth no felony in point of law, the justice may discharge him; but if a man be killed by another, though it may be misadventure, or self defence (which is not properly felony), or in making an assault upon a minister of justice in execution of his office, (which is not at all felony) yet the justice ought not to discharge him, for he must undergo his trial for it, and therefore he must be committed. 2 *H. H.* 121.

See also further on this subject, title "Bail." *(Ante.)*

A married woman may be committed, who is a material witness upon any charge of felony, if she refuses to find sureties for her appearance at the sessions. *Bennett. v. Watson.* 3 *M. & S.* 1. And so with regard to witnesses generally; if they refuse to be bound over to appear on the prosecution, they may be committed, and minors or infants under 21 years of age, as well as married women, are liable to find sureties. A justice of the peace in England may commit a person to prison in England, for an offence committed in Ireland, in order that the offender may be sent over and tried there. *R. v. Kimberley. Str.* 848. and so upon the same principle a justice of the peace in Canada may commit to gaol in this province, any person charged with felony committed in England, Scotland, or Ireland.

Where contemptuous and libellous words are spoken of a justice of the peace in the execution of his office, *and in his presence*, it seems that he may commit the party for a contempt. *R. v. Ravel.* 2. *Salk.* 420. *Mayhew. v. Locke.* 7. *Taunton.* 63.

By stat. 5 *H.* 4. *c.* 10. all felons shall be committed to the common gaol, and not elsewhere. But by stat. 6 *G. c.* 19. vagrants and other criminals, offenders, and persons charged with small offences, may for such offences, or for want of sureties, be committed either to the common gaol, or house of correction, as the justices may think proper.

If a man commit felony in one county, and be arrested for the same in another county, he may be committed to gaol in that county where he is taken. *Dalt. c.* 170. and if he escape and is taken on fresh suit in another county, he may be carried back to the county where he was first taken. *Dalt. c.* 170. also by stat. 24 *G.* 2. *c.* 55. if a person is apprehended upon a warrant, indorsed in another county for an offence not bailable, or if he shall not there find bail, he shall be carried back into the first county, and be committed (or if bailable, bailed) by the justices in such first county.

Form of the Commitment.

It must be in writing either in the name of the king, and only tested by the person who makes it, or it may be by such person in his own name, expressing his office, or authority, and must be directed to the gaoler or keeper of the prison. 2 *Haw.* 19. It should contain the name and surname of the party committed, if known, if not known, then it may be sufficient to describe the person by his age, stature, complexion, colour of his hair, and the like, and to add that he refuseth to tell his name. 1 *H. H.* 577. It should set forth that the party is charged upon oath. 2 *Haw.*

120. It ought to contain the cause as for treason, or felony, or suspicion thereof; otherwise the prisoner would not only be entitled to his discharge, under the *habeas corpus* act, but if no cause be expressed, and the prisoner escape, neither himself nor the gaoler would be punishable for the escape; whereas if the commitment contain the cause of imprisonment, the escape itself will then be an offence of the same degree as that for which the party was committed. 2 *Inst.* 52. 591. The cause also should be stated with *sufficient certainty*, in order that the party may know for what he is committed, and that it may appear to the court or judge, upon a *habeas corpus*, whether the cause assigned for the commitment was a legal one or not. Therefore if the commitment be for felony, the warrant ought not to state generally *for felony*, but it should the special nature of the felony; as felony *for the death of J. S.* or burglary *in breaking* the house of J. S.; otherwise the court could not determine whether the offence amounted to felony or not. 2 *Hale.* 122. 2. *Inst.* 592. 1. *Ld. Ray.* 213.

Although the form of a commitment for trial may be defective, yet the committing magistrate may issue a warrant of *detainer* remedying the defect, and this, even after the issuing of a *habeas corpus* *R. v. Gordon*, 1 *B. & A.* 572. But where the commitment is final and by way of *punishment*, it is essentially necessary that the offence (for which the commitment is made) be described with certainty: a commitment therefore of a person, as an apprentice or servant, for disobeying his indentures or articles, was held bad for uncertainty. *R. v. Everett*, *Cald.* 26. And if a man be committed for non-payment of two sums, one of which is not due, the warrant of commitment is bad for the whole. *Exp. Addis*, 1 *B. & C.* 90.

A commitment in *execution*, must alledge the party to have been convicted of the offence, and it is bad if it merely state that he was charged with it. *R. v. Rhode*, 4 *T. R.* 220. *R. v. Cooper*, 6 *T. R.* 509. 12 *East.* 78. *Note* (a). It must be distinctly expressed in the warrant, whether the commitment be for a time *certain*, or only till the payment of a fine, for the defendant ought to know for what he is in custody, and how he may regain his liberty; therefore, if he be committed for a fine, it ought to be till he pay the fine; if the intent be to punish him by fine and imprisonment, it ought to order imprisonment for such a time, and from thence till he pay his fine.

By Stat. 17 *G.* 2. *c.* 5. § 32. where any offender is committed by any justice, out of sessions, to the house of correction, by virtue of any law in force, which does not expressly limit the time and manner of punishment, the justice shall commit the offender, to be kept to hard labour until the next general or quarter sessions, or

until discharged by due course of law: but two justices (of whom the committing justice must be one) may discharge the offender before the sessions if they see cause; or the sessions may do so, or continue him in custody not exceeding three months: it must be under seal, and without this the commitment is unlawful: the gaoler is liable to false imprisonment; and the wilful escape by the gaoler, or breach of prison by the felon, makes no felony. 1 *H. H.* 383. But this must not be intended of a commitment by the sessions, or other court of record, for then the record itself, or the memorial thereof, which may at any time be entered of record, is a sufficient warrant, without any warrant under seal. 1 *H. H.* 584. It should also have set forth the place at which it is made. 2 *Haw.* 119. and it must have a certain date of the year and day. 2 *H. H.* 123.

Charges of the Commitment.

As to the immediate charges of the commitment, and the conveyance of the offender to gaol, it is provided by statute 3 *Jac.* 1. *c.* 10. § 1. that every person who shall be committed to gaol by any justice of the peace, for any offence, if he has means or ability thereto, shall bear his own reasonable charges of his conveyance to gaol, and the charges of such as shall be appointed to guard him thither, and in default of payment, the same may be levied by distress on his goods and chattels, if he shall have any in the county: and by statute 27 *G.* 2. *c.* 3. if the offender has not sufficient effects to bear these charges, then a magistrate shall, upon examination on oath, make an order on the treasurer of the county to pay the same. *Note.*—By the habeas corpus act 31 *Car.* 2. *c.* 21. § 2. the charge of conveying an offender is limited to twelve pence a mile; and as security is required before a man is removed, under that act, that he shall not escape by the way, this of course, renders guards in that case, not so necessary.

Gaoler shall receive the Prisoner.

If the gaoler shall refuse to receive a felon, or take any thing for receiving him, he shall be punished for the same, by the justices of gaol delivery. 4 *Ed.* 3. *c.* 10. *Dalt. c.* 170. But if a man be committed for felony, and the gaoler will not receive him, the constable must bring him back to the town where he was taken, and that town shall be charged with the keeping of him, until the next gaol delivery; or the person that arrested him, may, in such case, keep the prisoner in his own house. *Dalt. c.* 170. But in other cases, it seems that no one can justify the detention of a prisoner in custody, out of the common gaol, unless there be some particular reason for so doing; as, if the party be so dangerously sick,

that it would apparently hazard his life to send him to the gaol, or there be evident danger of a *rescue*, or the like. 2 *Haw.* 118.

By Stat. 3 *H.* 7. *c.* 3. the sheriff or gaoler shall certify the commitments to the next gaol delivery.

Commitment,—how it may be discharged.

It seems that a person legally committed for a crime certain, cannot (unless under the habeas corpus act) be lawfully discharged by any one but the king, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to prosecute him on a proclamation for that purpose, by the justices of gaol delivery: but if a person be committed on a bare suspicion, without an indictment for a supposed crime, when afterwards it appears that there was none; as for the murder of a person thought to be dead, who afterwards is found to be alive; it hath been holden that he may be safely dismissed without any further proceeding. 2 *Haw.* 121. This position, however, will not always hold good; for though a person supposed to be murdered, may have recovered from the injuries he received, yet the offender may still be indicted for an *attempt to murder*, or do the party some bodily harm, in which case it would be highly improper that any gaoler should take upon himself to discharge the prisoner, without an order from a magistrate.

A commitment after a conviction, for a time certain, is a commitment in execution, and does not admit of bail. *Anon.* 11. *Mod.* 45. But, on a commitment to the sessions, under the vagrant act, 17 *G.* 2. *c.* 5. § 32. two magistrates (of whom the committing magistrate was one) might discharge the prisoner before the sessions. *R. v. Rhodes*, 4. *T. R.* 220. When the commitment is till payment of a fine certain, it follows, of course, that the party is entitled to be set at liberty upon payment of it. *Dalt. c.* 170. § 12.

Warrant of Commitment.—(For Felony.)

Home District, } J. P. esquire, one of his Majesty's justices of the
to wit. } peace for the said district, to the constable of —— in the said district, and to the keeper of the (common gaol) at the city of Toronto, in the said district. These are to command you the said constable in his Majesty's name, forthwith to convey and deliver into the custody of the said keeper, of the said (common gaol) the body of A. B. charged this day before me the said justice, on the oath of C. D. of —— yeoman, and others, for that he the said A. B. (on the —— day of —— in the year of our Lord —— at —— in the said district, two pieces of gold coin called sovereigns; one woollen cloth coat, and one linen shirt, of

the monies, goods and chattels, of the said C. D. feloniously did steal, take and carry away) and you the said keeper are hereby required to receive the said C. D. into your custody in the same (common gaol) and him there safely to keep, until he shall be thence delivered by due course of law. Herein fail you not.—Given under my hand and seal, at the city of Toronto, in the said district, the —— day of —— in the year of our Lord ——. J. P.

Commitment upon a Conviction where the punishment is by imprisonment, &c. (Archbold.)

Home District. } To the Constable of —— in the said district, and to the keeper of the gaol (or house of correction) at —— in the said district. Whereas C. D. late of —— in the said district, labourer, was on this day duly convicted before me J. P. esq. one of his Majesty's justices of the peace for the said district, for that he the said C. D. [stating the offence, as in the conviction] against the form of the statute in that case made and provided; and I, the said J. P. thereupon adjudged the said C. D. for his said offence, to be imprisoned in the house of correction, (or gaol) at —— in the said district, (and there kept to hard labour) for the space of —— calendar months. These are therefore to command you, the said constable of —— aforesaid, to take the said C. D. and him safely to convey to the house of correction (or gaol) at —— aforesaid, and there to deliver him to the said keeper thereof, together with this precept: and I do hereby command you the said keeper of the said house of correction, (or gaol) to receive the said C. D. into the said house of correction (or gaol) there to imprison him (and keep him to hard labour) for the space of —— calendar months; and for your so doing this shall be your sufficient warrant. Given under my hand and seal &c.

Commitment in default of immediate payment of a Penalty.

(Unless the Act requires the immediate payment of a Penalty under the 27 *G.* 2. *c.* 20. it cannot be levied until four days after the conviction.)

Home District. } To the Constable of —— in the said district, and to the Keeper of the house of correction (or gaol) at —— in the said district. Whereas C. D. late of —— in the said district, labourer, was on this day duly convicted before me J. P. esq. one of his Majesty's justices &c. for that he the said C. D. (&c. stating the offence as in the conviction) against the form of the statute in that case made and provided; and I the said J. P. thereupon adjudged the said C. D. for his said offence to (&c. as in the conviction, to the words) calendar months, unless the said

sums should be sooner paid: and whereas the said C. D. being so convicted as aforesaid, and being now required to pay the said sums, hath not paid the same, or any part thereof, but herein hath made default; these are, therefore, to command you the said constable of —— aforesaid, to take the said C. D. and him safely to convey to the house of correction, at —— aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction (or gaol) to receive the said C. D. into the said house of correction, there to imprison him (and keep him to hard labour) [if authorised by the statute] for the space of —— calendar months, unless the said sums shall be sooner paid; and for your so doing this shall be your sufficient warrant. Given under my hand &c.

Commitment in default of payment of a Penalty, within a limited time.

Home District, } To the Constable of —— in the said district, and to the Keeper of the house of correction, (or gaol) at —— in the said district. Whereas C. D. late of —— in the said district, labourer, was on the —— day of —— last past, duly convicted before me J. P. one of his Majesty's justices &c. for that he the said C. D. (&c. stating the offence as in the conviction) against the form of the statute in that case made and provided; and (I) the said J. P. there upon adjudged the said C. D. for his said offence, to pay (&c. as in the conviction, to the end of the adjudication) and (I) the said J. P. then and there ordered that the said sums should be paid by the said C. D. on or before the —— day of —— then next: and whereas the said C. D. hath not on or before the said —— day of —— paid the said several sums or any part thereof, nor hath he yet paid the said several sums, or any part thereof, but therein hath made default. These are therefore to command you the said constable of —— aforesaid, to take the said C. D. and him safely to convey to the house of correction, (or gaol) at —— and there to deliver him to the said keeper thereof, together with this precept: and I do hereby command you the said keeper of the said house of correction, (or gaol) to receive the said C. D. into the said house of correction, there to imprison him (and keep him to hard labour) for the space of —— calendar months, unless the said sums shall be sooner paid; and for your so doing this shall be your sufficient warrant. Given under my hand and seal at —— in the said district, this —— day of —— in the year of our Lord 18—.

COMMON SCHOOLS.

By stat. 56 *G.* 3. *c.* 36. a sum of £6000 was granted for the establishment of common schools. § 2. The inhabitants of any

town, &c. are authorised to meet on or before the 1st June in each year during this act, to make arrangements for common schools. § 3. And when a competent number of persons unite and build a school house, furnish 20 scholars and in part provide for the payment of a teacher, such persons giving eight days notice, may appoint three fit persons trustees to the said school, who shall have power to appoint a teacher, and who must be a subject of his majesty. § 4. The trustees may remove such teacher for impropriety of conduct, and appoint another; but no teacher to be removed unless the board of education sanction such removal. § 6. The trustees may make rules for the government of the schools, and report to the board every three months the books used in such schools. § 7. Subscribers for the building of schools liable to be sued for their subscriptions. § 8. The trustees shall report once a year the state of the schools to the board of education, in order that the board may report to the governor, and the same be laid before the legislature. § 9. The governor to appoint a board of education in each district, to consist of not more than five fit and discreet persons, three of whom shall be a *quorum*, who shall have power to superintend the schools, and report annually to the governor the state of such schools, to be laid before parliament. § 10. (since repealed) The monies granted to be apportioned to the teachers, and paid yearly or half yearly. § 11. Upon the teachers producing a certificate of good conduct for six months with the number of scholars educated in said school, being not less than 20, the treasurer is authorised to pay such teacher his proportion. § 13. The board of education to proportion the money for the schools, and to send the treasurer a copy thereof; no allowance whatever shall be paid to any teacher, unless the trustees report to the board of education. § 14. When two adjoining districts find it convenient to compose such school, and a portion of the scholars reside in each district, the trustees may make the necessary returns and receive an equal proportion of the monies so granted for the support of such schools from each of the respective districts, in proportion to the number of scholars sent to school from each district. § 16. The act to continue in force 4 years.

By stat. 60 *G.* 3. *c.* 7. § 1. The above act with some exceptions is continued. § 2. £2,500 to be paid annually for the common schools, viz: £250 for each district. § 3. To be equally divided among the teachers, and paid half yearly or yearly as the trustees may direct, not exceeding £12 10s. to each teacher. § 4. The board of education in each district authorised to appoint a clerk, at a salary not exceeding £5 per annum. By stat. 4 *G.* 4. *c.* 8. a further sum of £150 per annum is granted for the support of sunday schools, to be at the disposal of the general board of

education for this province, and distributed to the several district boards. § 5. The provisions of the above act and the 56 *G.* 3. *c.* 36. to extend to the Indians. § 6. The teacher of a common school shall be examined by the board of education, or obtain a certificate from at least one member of the board, certifying his ability and fitness to teach.

By stat. 3 *W.* 4. *c.* 56. the further sums of £5,650, and £5,650 were granted in aid of public schoools for the years 1833, 1834.

COMMON SCOLD.

A COMMON scold *communis rixatrix*, (for our law latin, says *Blackstone*, confines it to the feminine gender) is a troublesome angry woman, who, by her brawling and wrangling amongst her neighbours, breaks the public peace; increases discord; and becomes a public nuisance to the neighbourhood: she is, therefore, liable to be indicted as a nuisance, and, on conviction, to undergo the punishment of the tre-bucket, or ducking-stool. 4 *Bl. Com.* 168.

COMPOUNDING FELONY.

IS A MISDEMEANOR at common law called THEFTBOTE—which is, where the party robbed not only knows the felon, but also takes his goods again, or other amends, upon agreement not to prosecute. This is frequently called *compounding of felony*, and formerly, was held to make a man an accessory, but is now punished only with fine and imprisonment. *Bl. Com. p.* 133. 16. *Ed.* 1 *Haw. c.* 59. § 5.

By statute 25 *G.* 2. *c.* 36. to advertise a reward for the return of things stolen, with no questions asked, or words to the same purport, subjects the advertiser, and the printer, to a forfeiture of £50 each.

Indictment for compounding a Felony.—(ARCHBOLD.)

Home District, } The jurors for our lord the King, upon their oath
to wit. } present, that heretofore, to wit, on the —— day of —— in the —— year of the reign of our sovereign lord William the fourth, at the township of —— in the county of —— in the home district, one A. the wife of J. N. feloniously stole, took, and carried away, one silver spoon, of the value of twenty shillings, of the goods and chattels of one J. S. against the peace of our lord the King, his crown and dignity. And that the said J. S. late of the township aforesaid, in the county and district

aforesaid, labourer, well knowing the said felony to have been by the said A. so as aforesaid done and committed; but contriving and intending unlawfully and unjustly to prevent the due course of law and justice in that behalf, and to cause and procure the said A. for the felony aforesaid, to escape with impunity afterwards, to wit, on the day and year aforesaid, at the township aforesaid, in the county and district aforesaid, unlawfully, and for wicked gain's sake, did compound the said felony with the said J. N. the husband of the said A., and then and there did exact, take, receive and have of the said J. N. the sum of twenty-six shillings, for, and as a reward for compounding the said felony, and desisting from all further prosecution against the said A. for the felony aforesaid; and that the said J. S. on the day and year aforesaid, at the township aforesaid, in the county and district aforesaid, did thereupon desist, and from that time hitherto hath desisted, from all further prosecution of the said A. for the felony aforesaid, to the great hindrance of justice, in contempt of our lord the King, and his laws, and against the peace of our lord the King, his crown and dignity.

COMPOUNDING OTHER OFFENCES.

The compounding of *informations on penal statutes*, is a misdemeanor against public justice, by contributing to make the laws odious to the people. 4 *Bl. Com.* 136. Therefore, in order to discourage malicious informers, and to provide that offences, when once discovered, shall be duly prosecuted, it is enacted by the statute 18 *Eliz. c.* 5. § 4. that if any informer, by colour or pretence of process, or without process, upon colour or pretence of any manner of offence against any penal law, make any composition, or take any money, reward, or promise of reward, without the order or consent of the court, he shall stand two hours in the pillory; be for ever disabled to sue on any popular or penal statute, and shall forfeit £10. This severe statute extends even to penal actions, where the whole penalty is given to the prosecutor. 4 *Bl. Com.* 136. *note (a.)* But it does not apply to penalties which are only recoverable by information before justices; and an indictment for making a composition in such a case, was holden bad, in arrest of judgment. *Rex. v. Crisp and others*, 1 *B. & A.* 282.

It has been decided, that a party is liable to the punishment prescribed by the 18 *Eliz. c.* 5. for taking the penalty imposed by a penal statute, though there was no action or proceeding for the penalty. *Rex. v. Gotley, East. T.* 1805. *Russ. & Ry.* 84.

CONFESSION.

If a party, on examination before a justice, confess a crime, it may be given in evidence against him, but not against others.—2 *Haw. c.* 46. § 3. And it is sufficient, though there is no other proof of his having committed the offence, or of the offence having been committed, if such confession was in consequence of a charge against him. *Rex. v. Eldridge, Russ. and Ry. c. c. R.* 440. But it must be voluntary, and not have been obtained by any promise, favour, menace or terror. The admissibility of a confession must depend upon circumstances. *Phil. Ev.* 104. And the identity of the examination must be proved before it can be read in evidence. *Sum.* 263. It must be in writing, and not orally; and must be taken altogether, and not by parcels. 2 *Haw. c.* 46. § 5. *Leach*, 286. And such examination should not be on oath. *Bull N. P.* 242. Persons confessing themselves, and on that confession adjudged guilty of felony, cannot be admitted to bail, as the only reason for admitting to bail in felony, is where the crime is doubtful. 2 *Haw. c.* 15. § 40. The confession must be in the very words used by the party, and not in the language of another, from recollection. *Rex. v. Sexton*, 1 *Burn*, 692. Prisoner may be convicted on the uncorroborated evidence of his own confession. *Leach*, 287.

See post "Examination."

CONSPIRACY.

Is a combination of *two* or more persons to injure a third person. 1 *Haw. c.* 72. § 2. or to injure or prejudice the community. 8 *Mod.* 11. 320. 3 *M. & S.* 67. Thus, where the defendants were charged with conspiracy in causing a man to be convicted and executed for a robbery, which they knew he was innocent of, with intent to obtain the reward then given by act of parliament. *R. v. Macdaniel*, 1 *Leach*, 45. *Fost.* 130. So, where the defendants were indicted for conspiring to accuse another of taking hair out of a bag, without alleging that it was done feloniously, Lord *Mansfield* held, that the gist of the offence was, the unlawfully conspiring to do an injury to another by a false charge; and that whether the conspiracy be to charge a man with criminal acts, or such only as affect his reputation, it is sufficient. *R. v. Rispal*, 1 *Bl. Rep.* 368. 3 *Burr.* 1320. So, where the prosecution is for the sole purpose of extorting money. *R. v. Hollingbury*, 4 *B. & C.* 329. So also, a conspiracy to prevent a prosecution for a felony, is as much an offence as a conspiracy to institute a false prosecution. 14 *Ves.* 65. And, a conspiracy of two magistrates

to prevent the course of justice, on an indictment for not repairing a highway, by signing a false certificate of the highway being in repair, in order to prevent the court from imposing a fine on the defendants, has been also held to be an indictable offence. *R. v. Hawley*, 6 *T. R.* 619. Among various other subjects of conspiracy may be mentioned, a conspiracy to obtain, by procuring in return, the appointment to a public office. *R. v. Pollman*, 2 *Camp.* 229. Of several defendants to injure a man in his trade. *R. v. Eccles*, 1 *Leach*, 274. To sell unwholesome wine or provisions. *R. v. Macarty*, and *Fordenbourgh*, 2 *Ld. R.* 1179. Journeymen combining not to work unless for certain wages. *R. v. Journeymen Tailors of Cambridge*, 8. *Mod.* 10. To suppress a will. *Brereton's case*, *Noy*, 103.; or to cause an illiterate person to execute a deed to his prejudice, by reading it over falsely to him. *R. v. Skirrett*, 1 *Sid.* 312. 431.

If all the defendants who are indicted for a conspiracy be acquitted but one, the acquittal of the rest is the acquittal of that one also, as there must be *two* concerned in the conspiracy. *Cro. Cir. Com.* 159. 2 *Ld. Ray*, 1167. 2 *Burr.* 993. But an indictment against one person and others unknown, is maintainable. 3 *Chit. c.* 4. 1141.

The offence of conspiracy may be tried by justices of the peace in their quarter sessions. *R. v. Rispal*, 3 *Burr.* 1320.; and the act of one party, in pursuance of the common object, is evidence in law, against all the parties. *Ph.* on *Ev.* 76. If one only, of two persons indicted, appear, he may be tried in the absence of the other defendant. *R. v. Kinnerley*, 1 *Str.* 193.

The punishment for a conspiracy is by pillory, fine and imprisonment, and sureties for the good behaviour. 2 *Burr.* 1027. *See further post "Workmen."*

Indictment for Conspiracy. (Chitty.)

Home District, } The jurors for our lord the King, upon their
to wit. } oath, present that A. B. late of —— in the home district, yeoman, C. D. late of —— in the said district, yeoman, and E. F. late of —— in the same district, labourer, being persons of evil minds and dispositions, on the —— day of —— in the —— year of the reign of our sovereign lord William the fourth, with force and arms, at the township aforesaid, in the county and district aforesaid, unlawfully and wickedly *(or if the conspiracy be malicious*, say "falsely and maliciously") did conspire, combine, confederate and agree together, to *(here state the object of the conspiracy)* and the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. &c. in pursuance

of, and according to the said conspiracy, combination, confederacy and agreement, between them the said A. B. &c. as aforesaid, had did on &c. at &c. *(the place where the overt act took place) here set out the overt acts of conspiracy)* to the great damage of &c. *(the party immediately injured)* to the evil example of all others, and against the peace of our said lord the king, his crown and dignity, *(add a second count, stopping at the statement of the conspiracy, omitting the overt acts, and concluding as above.)*

CONSTABLE.

Who are liable to serve the Office.

No person can be appointed a constable who is not an *inhabitant* of the place where he is to serve. 1 *Burn*, 703. *R. v. Adhard*, 4 *B. & C.* 772. And if a very poor and ignorant person be chosen, he may by law be discharged, and an abler person appointed in his room. *Ibid. Dalt. c.* 28.

Barristers at law, attornies, and other officers of the court of king's bench, are exempted from serving the office. 2 *Keb.* 508. *Cro. Car.* 389 2 *Haw. c.* 10. § 39. And by the ancient custom of the realm, surgeons have been allowed the like privilege.

An *officer in the King's service*, or a *gentleman of quality*, may perhaps be relieved from serving such office, upon application to the court of king's bench, provided there are other persons sufficient to execute the office. 2 *Haw. c.* 10. § 41.

It has been holden, that the King may exempt any person, if the exemption be not extended so far as to prevent the *existence* of the office in any particular place. *Rex. v. Clarke.* 1 *T. R.* 682. By the 10 & 11 *W.* 3. *c.* 23. § 2. 3. the prosecutor of a felon to conviction is discharged from liability to serve as constable. A *forcigner*, though naturalized, is not liable to serve.—*Rex. v. De Mierre*, *Burr.* 278. No man that *keeps a public house* ought to be made a constable, if there are other persons in the parish proper to serve. *Per Holt, C. J.* 6 *Mod.* 42.

How appointed, and how punishable for refusal to serve.

By the 33 *G.* 3. *c.* 2. § 10. it is enacted, that it shall be lawful for justices of the peace, within the respective limits of their commissions, at their general quarter sessions in April, or the greater part of them, to nominate and appoint, yearly, a sufficient, discreet and proper person, to serve the office of high constable, in each and every district; and also to nominate and appoint such a sufficient number of persons as in their discretion will be necessary, to serve the office of constable, in each and every parish,

township, reputed township or place; and the said constable and constables, before they enter into their office, shall severally take the following oath, to be administered by any justice of the peace:

You shall and well and truly serve our sovereign lord the King, in the office of —— for the —— of ——, for the year ensuing, according to the best of your skill and knowledge.—So help you God.

And after such service, such persons shall be exempt from any of the offices mentioned in this act, for three years.

By 13 & 14 *Car.* 2. *c.* 12. § 15. if a constable die, or go out of the parish, any two justices may make and swear a new one, till the next quarter sessions, which shall either approve or appoint another.

If a constable, being duly appointed, refuse to take the oath, he may be indicted at the assizes or sessions, when, if found guilty, he may be fined, and in default of payment, he may be committed. *Rex. v. Lane*, 2 *Str.* 920. But if he has once been allowed to appoint a deputy, who is approved of, he is altogether discharged. 3 *Esp. Rep.* But such deputy must be duly sworn. *Wood's Inst.* 61. *c.* 7.

Power and duties of the Office.

The *high constable* has the superintendence and direction of all *petty constables* within his district, and he is, in a manner, responsible for their conduct, since he is bound to notice and present their defaults; for the neglect of which duty he is, in fact, presentable himself.

Every high and petty constable is, by the common law, a conservator of the peace. 2 *Haw. c.* 8. § 6. Therefore, he is authorised, without any warrant, to arrest all traitors, felons, and suspicious persons, and all those whom he shall see upon the point of committing treason or felony, or doing any act which would manifestly endanger life. 2 *Haw. c.* 12. § 19. 1 *Bac. Ab.* 441. In case of any breach of the peace committed, or one about to be committed, in the presence of a constable—as where violent threats or attempts are used by any person to beat or hurt another—the constable may arrest the party and carry him before a magistrate, or detain him till he can conveniently do so. *Dalt. c.* 1. 116. § 3. A constable has no power to execute a warrant out of the jurisdiction of the justice who grants it,—*Milton v. Green*, 5 *East.* 233.—unless backed by a magistrate of the district in which the offender is found. 24 *G.* 2. *c.* 55. It is said, however, that a constable is not obliged to execute a warrant out of his district. —— *v. Norman*, 1 *Ld. R.* 736. A constable cannot imprison

a person arrested by him for any longer time than till he can conveniently bring him before a magistrate. *Sav.* 98. *H.* 92. 4 *Com. Dig. Leet (M.* 9.*)* A constable (after giving notice that he is one) may break open the doors of a house to arrest a felon, if he be concealed therein, and peaceable entrance is denied. 2 *H. P. C.* 90. 82. And if the felon resists or flies, it is not murder if the constable kill him. He may commit affrayers to the stocks on his own view—but not if absent. *Dalt. c.* 1. *Cro. Eliz.* 375. 376. He may imprison to prevent a felony. *Moore*, 284. And if one be menaced, he may compel the menacer to find surety, or commit him to prison till he does. 4 *Inst.* 265. *Cro. Eliz.* 375. 6. He may break open a house, when entrance is denied, to abate an affray, or to suppress disorderly drinking, or noise, at an unreasonable hour of the night. *Hale, P. C.* 95. He may imprison one who insults or assaults himself, or opposes him, though verbally, in the execution of his office, and may beat another in his own defence. *Cromp. J. P.* 131. If a warrant be directed generally, "to bring before me, or some other justice," he may carry the prisoner before what justice he chooses, in the district—but not if specially directed. 5 *Rep.* 596. He has no right to handcuff a prisoner, except he has attempted to escape, or that it is necessary in order to prevent an escape. 3 *Ma. Ca.* 299. He should seize the goods of felons who fly the country, for the King's use. *Cromp. J. P.* 201. He is to aid and assist in the appraisement and sale of goods distrained for rent, and may swear the appraisers 2 *W. & M. Sess.* 1. *c.* 5. He is also to aid landlords in seizing, as a distress for rent, goods fraudulently removed to avoid such distress, and may break open a house wherein they are deposited—(oath being first made before a justice, of reasonable suspicion of their being there.) 11 *G.* 2. *c.* 19. Constables may seize a stranger guilty of profane cursing and swearing, and carry him before a justice; but if known, he must lay an information. 19 *G.* 2. *c.* 21. § 3. When on a warrant indorsed he apprehends an offender, he is to carry him before the justice who endorsed it; and if the offender find bail, he is to receive the recognizance, examination, &c. and deliver them to the clerk of assize, or clerk of the peace of the district where such offender is required to appear; and if the offender is not bailed, he is to carry him before a justice of the county where the offence was committed. 24 *G.* 2. *c.* 55. Constable making a distress under a justice's warrant, shall, on demand, shew the same to the party, and permit a copy to be taken. 27 *G.* 2. *c.* 20. But if a constable be duly sworn, and commonly known to be an officer, and act within his own precinct, he need not shew the party his warrant, though he should demand it; but he ought to

acquaint the party with the substance of it. 2 *Haw. c.* 13. 1 *East. P. C.* 319. He is not discharged from his office until his successor is sworn. 12 *Mod.* 256.

As the office of a constable is wholly ministerial, he may appoint a deputy to execute a warrant directed to him, when by reason of sickness, absence, or otherwise, he cannot do it himself. 2 *Haw. c.* 10. § 36. And such a deputy may be appointed by parol, and need not be sworn. *Medhurst v. Wate*, 3 *Burr.* 1259. But unless the deputy is duly allowed and sworn, the constable is answerable for him in case of any misconduct. *Wood's Inst. b.* 1. *c.* 7. ;—though, if duly sworn, the liability of the principal is at an end. *Underhill v. Witts*, 3 *Esp.* 56.

Indemnity and Protection.

An action against a constable for any act done in the execution of his office, must be brought in the district where the offence was committed, to which action he may plead the general issue, and give the special matter in evidence ; and if he recover he shall have double costs. 21 *Jac.* 1. *c.* 12. This extends also to his deputy. *Cromp. J. P.* 201. And every man aiding a constable in the execution of his office, has by law, the same protection as the constable. 2 *Hale, P. C.* 97. A justice's warrant is a good justification of a constable, in any matter within the jurisdiction of such justice, but not otherwise. *Str.* 711.

By stat. 24 *G.* 2. *c.* 44. the constable is not answerable for the execution of a warrant, in case the magistrate who made it has no jurisdiction, if he complies with the requisitions of that statute: and by § 6. no action shall be brought against him or any person acting by his order and in his aid, for any thing done in obedience to a warrant under the hand or seal of a justice, until demand in writing hath been made or left at his usual place of abode, of the perusal and copy of the warrant, and the same hath been refused or neglected for *six* days after such demand; and if, after compliance therewith, any action shall be brought, without making the justice a defendant, the jury shall, on production of the warrant, give their verdict for the defendant, notwithstanding any defect of jurisdiction in the justice. If the action be brought jointly against the justice and constable, the jury shall, on proof of the warrant, find for the constable, notwithstanding such defect of jurisdiction. By § 8. no action shall be brought against any constable acting in the execution of his office, unless commenced within six calendar months after the act committed.

If a constable acting under a distress warrant, seize the goods of A. mistaking them for the goods of B. he is entitled to the pro-

tection of the statute. *Parton v. Williams*, 3 *B. A.* 330. A constable who arrests a person given him in charge, is not liable to an action of false imprisonment, though the charge be ill founded, unless he make himself a party in oppressing the person so arrested, knowing the charge to be false. *White v. Taylor*, 4 *Esp.* 80.

Of his Punishment.

He may be fined or imprisoned, or both, for refusing to serve the office when appointed. *Arch. C. P.* 384. He is indictable for neglecting his duty, either at common law or by statute. 1 *Salk.* 381. And may be fined for not endeavouring to pacify an affray in his presence. *Cromp. J. P.* 130. If he will not return his warrant, or what he has done under it (for he ought to keep the warrant for his own justification) the sessions may fine him. 6 *Mod.* 83. He is guilty of felony if he lets a felon out of the stocks. 1 *Hale, P. C.* 596. He may be removed for just cause by the authority which appointed him. *Bulst.* 174.

Of his Expenses.

By 46 *G.* 3 *c.* 5. justices in sessions may award such compensation as they may think proper to constables, for serving notices of the appointment of town officers, under that act. With the above exception, the provincial statutes do not appear to have made any express provision for the payment of a constable's general expenses, but in practice it has been usual for the constable to present his account to the justices in sessions, who, after due examination and allowance, make an order upon the district treasurer for payment.

Form of appointment of a Deputy Constable.

I, C. D. Constable of —— in the —— district, do hereby make, substitute and appoint G. H. of —— yeoman, my true and lawful deputy, in the office of constable, so long as I shall hold the same, (or during the continuance of my will and pleasure). Witness my hand, the —— day of —— in the year of our Lord 18—.

Oath to be administered by Constable to Appraisers, on Goods being Distrained for Rent.

You shall swear that you will faithfully appraise and value the goods now taken in distress, and mentioned in the inventory to you shewn, as between buyer and seller, according to the best of your skill and knowledge. So help you God.

Memorandum to be endorsed by the Constable on the Inventory.

Memorandum, that on the —— day of —— in the year of our Lord 18—, A. B. of —— and C. D. of —— two sworn appraisers, were sworn upon the holy evangelists, by me E. F. constable, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of their skill and knowledge; as witness my hand. E. F. Constable.

Present at the time of swearing the said A. B. and C. D. as above, and witness thereto.

J. K.
L. M.

Proclamation by Constable for Rioters to disperse.

Our sovereign lord the King charges and commands all persons here assembled, immediately to disperse themselves, and peaceably depart to their several habitations, on pain of imprisonment.

Summons by a Constable in pursuance of a Justice's precept. (Toone.)

(*Archbold*, in his work on Convictions, recommends the service of a copy of the Summons on the Defendant. p. 97. But as both forms are in practice, either will do.)

To A. B. of ——

Home District, } In pursuance of a precept to me directed, by J.
to wit. } C. esq. one of his Majesty's justices of the peace in and for the said home district, I do hereby summon and warn you personally to be and appear before the said justice, *(or if general)* or such other of his Majesty's justices of the peace for the said district, as shall be present at —— in the township of —— in the said district, on —— the —— day of —— at the hour of — in the ——noon of the same day, then and there to answer the complaint and information of —— [*state the offence as in the justice's precept.*] Herein fail not at your peril. Given under my hand and seal the —— day of —— in the year of our Lord 18—

Constable's Return on the back of the Precept.

The within —— was duly summoned to appear and answer as he is within required, on the —— day of —— 18—

D. E. Constable.

Warrant for an Assault on a Constable.

To A. B. constable of the the township of —— in the Home district, and to all others his Majesty's constables and peace officers within the said district.

Home District, } Whereas C. D. hath this day made complaint
To wit. } on oath, before me C. J. esquire, one of his Majesty's justices of the peace in and for the said district, that E. F. of ——— in the said district, labourer, on the ——— day of ——— last, at ——— aforesaid, in the district aforesaid, in and upon him the said C. D. did make a violent assault, and then and there did beat, wound and ill treat, him the said C. D. then being one of the constables of the said township, and then and there also being in the due execution of his office as constable aforesaid; these are therefore to command you, the said constable, in his Majesty's name, forthwith to apprehend the said E. F. and bring him before me at ——— to answer the said complaint, and to be further dealt with according to law. Given, &c. J. C.

Commitment of a Constable for a wilful escape.

To the keeper of the gaol at Toronto, in the home district:

Home District, } Receive into your custody in the said gaol and
to wit. } there safely keep until the next general quarter sessions of the peace, to be holden in and for the said district, or until thence otherwise delivered by due course of law, the body of A. B. one of the constables of ——— in the said district, herewith sent you, and charged before me J. C. esquire, one of his Majesty's justices of the peace in and for the said district, on the oath of C. D. with having this day wilfully and designedly suffered and permitted one G. H. to escape out of his custody, and go at large at ——— aforesaid, in the district aforesaid, the said G. H. having been committed to the custody of him the said A. B. as such constable as aforesaid, by virtue of a warrant under my hand and seal, for felony, to be conveyed by him to the gaol at Toronto aforesaid. Given under my hand and seal, &c.

Indictment for refusing to serve the office of High Constable.

(Archbold.)

Home District, } The jurors for our lord the King, upon their
to wit: } oath present, that at the general quarter sessions of the peace, holden at the city of Toronto, in and for the home district, on ——— the ——— day of ——— in the fourth year of the reign of our sovereign lord William the fourth, to wit, at the city aforesaid, in the district aforesaid, before A. B. and C. D. esquires, and others their associates, justices of our said lord the King, assigned to keep the peace of our said lord the King in the said district; and also to hear and determine divers felonies, trespasses and other misdemeanors, in the said district committed, one J. S. late of the township of ——— in the county of ——— in the said district, yeoman, then, and long before, being an inha-

bitant, and residing in the township last aforesaid, in the county and district aforesaid, and a fit and able person to execute the office of high constable within the said district, at the said sessions, by the justices aforesaid in due manner, was then and there elected to be high constable of the said home district, in the room and stead of one J. N.; whereof the said J. S. afterwards to wit, on the day and year aforesaid, at the township aforesaid, in the county and district aforesaid, had notice: nevertheless the said J. S. not regarding his duty in that behalf, but contriving and intending the due execution of justice to hinder and prevent, afterwards to to wit, on the day and year aforesaid, at the township aforesaid, in the county and district aforesaid, unlawfully, wilfully, obstinately and contemptuously, did refuse, and from thence continually until the day of the taking of this inquisition, unlawfully, wilfully, obstinately and contemptuously, hath refused, and still doth refuse, to take upon himself and execute the said office of high constable within and for the district aforesaid, to wit, at the township aforesaid, in the county and district aforesaid, contrary to his duty in that behalf; in manifest contempt and delay of justice; against the form of the statute in such case made and provided; and against the peace of our lord the King, his crown and dignity.

(The above form, with a slight variation, will answer for petty constables also.)

CONSTITUTIONAL ACTS.

By a British statute—14 *G.* 3. *c.* 88, entitled, "an act for making more effectual provision for the government of the province of Quebec, in North America," it is enacted, that the inhabitants of the said province of Quebec may have, hold and enjoy, the free exercise of the religion of the church of Rome, subject to the King's supremacy declared and established by the 1 *Q. Eliz.* over all the dominions and countries which then did, or thereafter should, belong to the imperial crown of this realm; and that the clergy of the said church may hold, receive and enjoy, their accustomed dues and rights, with respect to such persons only as shall profess the said religion. § 5. And that it shall be lawful for his Majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the protestant religion, and for the maintenance and support of a protestant clergy within the said province, as he or they shall from time to time think necessary and expedient. § 6. Provided that no person professing the religion of the church of Rome, and residing in the said province, shall be obliged to take the oath required by the said statute 1 *Q. Eliz.* or any other oaths substited by any other act in the place thereof; but that every such person who by the said statute is required to take the oath therein

mentioned. shall be obliged to take and subscribe the following oath, before the governor, or such other person in such court of record as his Majesty shall appoint.

Form of the Oath.

I, A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his Majesty King George, and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown and dignity; and I will do my utmost endeavour to disclose and make known to his Majesty, his heirs and successors, all treasons, and traitorous conspiracies and attempts, which I shall know to be against him or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power and person whomsoever to the contrary.—So help me God.

And every such person who shall neglect or refuse to take the said oath, shall incur the penalties of the 1 *Q. Eliz.*

§ 8. That in all matters of controversy relative to property and civil rights, resort shall be had to the laws of Canada, as the rule for the decision of the same.

§ 17. And that nothing herein contained shall extend, or be construed to extend, to prevent his Majesty, his heirs and successors, from erecting, constituting and appointing, such courts of criminal, civil, and ecclesiastical jurisdiction, as he or they shall think necessary and proper for the circumstances of the province.

By statute 31 *G.* 3. *c.* 31. commonly called the "act of constitution," and entitled "an act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled, 'an act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," after noticing that his Majesty had been pleased to signify, by his message to both houses of parliament, his royal intention to divide his province of Quebec into two separate provinces, to be called the province of Upper Canada and the province of Lower Canada—it is enacted, that there shall be within each of the said provinces respectively, a legislative council, and an assembly, to be severally composed in the manner thereinafter described; and that all laws passed by the legislative council and assembly of either province, and assented to by his Majesty, his heirs or successors, or in his Majesty's name by the governor, or lieutenant governor of such province, or such person as his Majesty shall appoint to administer the government, shall be valid and binding, to all intents and purposes. § 2.

§ 3. That for the purpose of constituting such legislative council as aforesaid, it should be lawful for his Majesty, by an instrument under his sign manual, to authorise and direct the lieutenant governor, within the time thereinafter mentioned, in his Majesty's name, and by an instrument under the great seal of such province, to summon to the said legislative council, to be established in each province, a sufficient number of discreet and proper persons, being not fewer than seven to the legislative council for the province of Upper Canada, and not fewer than fifteen for the province of Lower Canada; and that it shall be lawful for his Majesty, his heirs or successors, from time to time, by an instrument under his or their sign manual, to authorise and direct the lieutenant governor to summon to the legislative council of such province, in like manner, such other person or persons as his Majesty, his heirs or successors, shall think fit. § 6. No person under twenty-one, or who shall not be a natural born subject; or a subject to his Majesty naturalized by act of the British parliament; or a subject of his Majesty by the conquest and cession of Canada, shall be summoned to such legislative council. § 5. Each member of such council shall hold his seat therein for life, subject to the provision thereinafter contained for vacating the same. § 6. Whenever his Majesty, his heirs or successors, shall think proper to confer upon any subject of the crown of Great Britain, by letters patent under the great seal of the province, any hereditary title of honor, rank or dignity, of such province, descendible according to any course of descent limited in such letters patent, it shall be lawful for his Majesty, his heirs or successors, to annex thereto, if he or they shall think fit, an hereditary right of being summoned to the legislative council, descendible according to the course of descent so limited with respect to such title, rank or dignity. § 7. Such hereditary right to be forfeited by four years absence from the Province, or by taking the oath of allegiance to any foreign government, unless his Majesty shall think fit to summon such person to the council; and if any member of the council shall reside out of the province four years continually, without permission of his Majesty, signified to such legislative council by the lieutenant governor; or for two years, without the permission of the lieutenant governor, signified in like manner; or shall take the oath of allegiance to any foreign government—his seat shall become vacant. § 9. Hereditary rights so forfeited or vacated, are to remain suspended during the lives of the parties; but on their deaths, to descend to the person next entitled. § 10. Seats in the legislative council shall also be forfeited, and hereditary rights extinguished, for treason. § 12. The lieutenant governor shall have power and authority, from time to time, to appoint and

remove the speaker of the legislative Council. § 13. His Majesty authorised to direct the lieutenant governor from time to time, as occasion shall require, in his Majesty's name, and by an instrument under the great seal of the province, to summon and call together an assembly. § 14. And for the purpose of electing members of such assembly, to issue a proclamation, dividing such province into districts, or counties, or circles, and towns or townships. § 17. The whole number of members to be chosen in the province of Upper Canada, shall not be less than sixteen. § 18. Writs for the election of members to serve in the said assembly, shall be issued by the lieutenant governor, within fourteen days after the sealing of such instrument convening such assembly; and such writs shall be directed to the respective returning officers of the said districts or counties, or circles, and towns or townships, returnable within fifty days, at farthest, from the day on which they shall bear date, unless otherwise provided by the legislature; and that writs shall in like manner be issued for the election of members in the case of any vacancy happening, by death, or summons to the legislative council; and in either of such cases, the writ for the election of a new member shall be issued within six days after the same shall be known to the proper office for issuing such writs of election. § 19. Returning officers required to execute such writs. § 20. The members for the several districts, or counties, or circles, shall be chosen by the majority of votes of such persons as shall be possessed, for their own use, of freehold lands or tenements within such district or county, or circle, of the yearly value of 40s. sterling, or upwards, over and above all rents and charges; and the members for the towns or townships shall be chosen by the majority of votes of such persons as shall be possessed, for their own use, of a freehold, dwelling-house and lot of ground, in such town or township, of the yearly value of £5 sterling, or upwards; or as having been resident within such town or township for the space of twelve calendar months next before the date of the writ of summons for the election, shall bona fide have paid one year's rent for the dwelling-house in which they shall have so resided, at the rate of £10 sterling per annum, or upwards. § 21. No person shall be eligible to sit or vote in such assembly, who shall be a member of the legislative council, or a minister of the church of England, or a minister, priest, ecclesiastic, or teacher, either according to the rites of the church of Rome, or under any other form or profession. § 22. No person shall be capable of voting at an election, or of being elected, who shall not be of the full age of twenty-one years, and a natural born subject; or naturalized by the British parliament; or a subject by the conquest of Canada; nor any person attainted

for treason or felony; or who shall be within any description disqualified by the provincial legislature. § 24. Every voter, before he is admitted to vote, shall, if required by any of the candidates, or by the returning officer, take the following oath :—

"I, A. B. do declare and testify, in the presence of Almighty God, that I am, to the best of my knowledge and belief, of the full age of twenty-one years, and that I have not before voted at this election."

And every person shall also, if required, make oath previous to his being admitted to vote, that he is, to the best of his knowledge and belief, duly possessed of such lands and tenements, or of such a dwelling-house, as entitles him to vote at such election. § 25. 26. His Majesty may authorise the lieutenant governor to fix the time and place of holding elections, and of holding the council and assembly, giving due notice; and prorogue and dissolve the same when he shall judge it expedient. § 27. The legislature shall be convened once, at the least, in every 12 calendar months; and every assembly shall continue four years, from the return of the writs, and no longer. § 28. All questions in the house shall be decided by a majority of votes; and when the voices shall be equal, the speaker shall have the casting vote. § 29. No member shall sit till he has subscribed the following oath, before the governor, lieutenant governor, or person administering the government, or before some person or persons authorised by the said governor, &c. to administer such oath.

"I, A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his Majesty King George, as lawful sovereign of the kingdom of Great Britain, and of these provinces, dependent on and belonging to the said kingdom; and that I will defend him to the utmost of my power, against all traitorous conspiracies and attempts whatever, which shall be made against his person, crown and dignity; and that I will do my utmost endeavour to disclose and make known to his Majesty, his heirs or successors, all treasons, and traitorous conspiracies and attempts, which I shall know to be against him or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power whatever to the contrary.—So help me God."

§ 30. 31. 32. The governor may give or withhold his Majesty's assent to bills passed by the two houses of parliament, or reserve them for his Majesty's pleasure, and transmit to the secretary of state copies of such bills as have been assented to, which his Majesty in council may declare his disallowance of within two

years; and bills reserved for his Majesty's pleasure shall not have any force till his Majesty's assent be communicated to the council and assembly. § 33. The laws in force to continue, unless repealed or varied by this act. § 36. His Majesty may authorise the lieutenant governor, from and out of the crown lands, to make such allotment and appropriation of lands for the support of a protestant clergy, as may bear a due proportion to the amount of such lands within the province as had at any time been granted; and that whenever any grant of lands shall hereafter be made, there shall at the same time be made, in respect of the same, a proportionable allotment and appropriation of lands for the above purpose, within the township or parish to which such lands shall appertain, or adjacent thereto; and no such grant shall be valid unless the same shall contain a specification of the lands so allotted, which shall be of the like quality as the lands granted, and equal in value to *one-seventh* of the lands so granted. § 38. 39. His Majesty may authorise the lieutenant governor, with the advice of the executive council, to erect parsonages, and endow them; and the lieutenant governor is authorised to present incumbents, who are to enjoy the same in the same manner as incumbents in England. § 40. Every such presentation shall be subject to the spiritual and ecclesiastical jurisdiction of the bishop of Nova-Scotia. § 41. 42. The provisions respecting the allotment of lands for the support of a protestant clergy, shall be subject to be varied or repealed by any express provisions for that purpose contained in any act or acts of the provincial legislature, and assented to by his Majesty, and laid before the British parliament previous to receiving his Majesty's assent. § 43. All lands granted in Upper Canada, shall be granted in free and common soccage.

CONTEMPT.

A CONTEMPT is, in legal meaning, either an open resistance or insult to the power of a court of record, committed by any person in the face of the court; or a disobedience to its rules, orders or process, by a party who is not present in court. 4 *Bl. Com.* 283. So, where abusive words are spoken to a *justice of the peace*, in the execution of his office whilst sitting as a magistrate, he may commit for the contempt; but if the words are spoken of him behind his back, the party can then only be indicted *R. v. Revel.* 1 *Str.* 420. A commitment by the sessions, or other court of record, need not be under seal, as the memorial thereof, which may at any time be entered of record, is sufficient without any warrant. 1 *Hale.* 583, 584. But a justice cannot commit for a

contempt, except by warrant in writing. *Mayhew v. Locke.*—7 *Taunton* 63. And, unless the words be spoken under circumstances which render it probable they may prevent the due administration of justice, it will be safer for the magistrate to abstain from summary punishment and proceed by indictment, which will certainly lie for words addressed to him while in the discharge of his duty. *Dickenson Q. S.* 43. If however the party be imprisoned *instanter*, the commitment must be for a time certain; and a commitment, *until the defendant is discharged by due course of law*, is bad. *Rex. v. James.* 5 *B. & A.* 894. It has been held, that a commitment which charged the party, generally, with having insulted justices of the peace in the execution of their office, without specifying what he said or did, is sufficient. 2 *Barnard*, 155. It is, however, in general advisable to describe the offence concisely, but in substance as in an indictment. *Chitty. C. L. p* 112.

Commitment for Contempt.

To the keeper of ——

Home District, } Receive into your custody the body of C. D.
To wit. } herewith sent you by me A. W. esquire, one of his Majesty's justices of the peace in and for the said district, and charged by me, the said justice, upon the view, of me the said justice, with contempt and indecent behaviour in my presence, by insulting and obstructing me, the said justice, in the due execution of my office, as such justice as aforesaid, *(and for saying, &c. in the presence and hearing of me, the said justice, here set forth the particulars, if the justice shall think it necessary,)* and him the said C. D. detain in your custody, in the gaol aforesaid, for the space of —— hours, to be computed from the hour of —— o'clock in the forenoon of this present —— day of —— instant, for his contempt aforesaid, (or until he find two sufficient sureties for his appearance at the next general quarter sessions of the peace for the said home district, to answer to the charge aforesaid, or be otherwise discharged by due course of law.) Given under my hand and seal, at Toronto, in the said district, the —— day of ——

CONVICTION.

A CONVICTION ought to be in words and figures at length. It is not usual or necessary for the convicting justices to draw up a formal conviction, in the first instance, in every case in which a penalty is inflicted, but to make minutes of the proceedings, (without attending to the precise form) at the time of pronouncing the judgment, from which they may afterwards, if occasion require, make out a regular conviction; nor is it necessary, that it should

be drawn up in due form, before the penalty is levied. *Paley* on *Con.* 316. Even after an action brought, it seems that justices may draw up a conviction, and give it in evidence, by way of defence, provided the date is warranted in fact by the time when the conviction actually took place. *Massey v. Johnson*, 12 *East.* 82.

When the statute prescribes a particular form of conviction, it must be exactly followed; but when it is merely directory, "that the justice be authorised or empowered to draw up the conviction in the form or to the effect following," then the justice is not bound to any precise form of words, although it will be prudent for him to adhere to the form given, as nearly as possible, and pursue the words of the statute. *Pal.* on *Con.*

By statute 2 *W.* 4. *c.* 4. it is enacted, that in all cases wherein a conviction shall take place, and no particular form for the record thereof hath been directed, the justice or justices duly authorised to proceed summarily therein, and before whom the offender or offenders shall have been convicted, shall and may cause the record of such conviction to be drawn up in the manner and form following, or in any words to the same effect, *mutatis mutandis*, that is to say,—

Form of Conviction.

—— District, } Be it remembered, that on the —— day of ——
to wit: } in the year of our Lord —— at —— in the district of —— A. B. of —— in the district of —— labourer, (or as the case may be) personally came before me, (or before us) C. D. one (or more, as the case may be,) of his Majesty's justices of the peace for the said district of —— and informed me, (or us, as the case may be) that E. F. of —— in the district of —— labourer, (or as the case may be) on the —— day of —— in the year of our Lord —— at —— in the said district of —— did [here set forth the fact for which the information is laid] contrary to the form of the statute in such case made and provided, whereupon the said E. F. after being duly summoned to answer the said charge, appeared before me, (or us, as the case may be) on the —— day of —— in the year of our Lord —— at —— in the said district of —— and having heard the charge contained in the said information, declared that he was not guilty of the said offence, (or as the case may happen to be) did not appear before me, (or us) pursuant to the said summons, or did neglect and refuse to make any defence against the said charge, whereupon I, or we, (as the case may be) or nevertheless I or we, (as the case may be) the said justice or justices, did proceed to examine into the truth of the charge contained in the said information, and on the —— day of —— aforesaid, at —— in the district of —— aforesaid,

one credible witness, to wit, A. W. of —— in the district of —— labourer, (or as the case may be) upon his oath deposeth and saith, [if E. F. be present, say in the presence of the said E. F.] that on the —— day of —— in the year of our Lord —— the said E. F. at —— in the said district of —— [here state the evidence, and as nearly as possible in the words used by the witness; and if more than one witness be examined, state the evidence given by each; or if the defendant confess, then, instead of stating the evidence say, and the said E. F. acknowledged and voluntarily confessed the same to be true,] therefore it manifestly appearing to me, (or us, as the case may be) that he the said E. F. is guilty of the offence charged upon him in the said information, I, or we, (as the case may be) do hereby convict him of the offence aforesaid, and do declare and adjudge, that he the said E. F. hath forfeited the sum of —— of lawful money of this province, for the offence aforesaid, to be distributed or paid, (as the case may be) according to the form of the statute in that case made and provided. Given under my hand, or our hands, (as the case may be) and seal, (or seals) the —— day of —— in the year of our Lord ——.

Sec. 2. In all cases where two or more justices are authorised to hear and determine any complaint, one justice shall be competent to receive the original information or complaint, and issue the summons or warrant, requiring the party to appear before two justices, as the case may require, and after adjudication thereon, by two or more such justices, all subsequent proceedings to enforce obedience thereto, whether respecting the fine, imprisonment, costs or other matter, may be enforced by either of the said justices, or by any other justice of the district, having before him a record of such conviction, certified by the justice or justices who adjudged the case. § 3. No conviction shall be set aside in consequence of any defect of form. § 4. And in cases where convictions shall be quashed, no more damages than one shilling, and the amount levied by virtue thereof, shall be recoverable against any justice, unless the act complained of shall be charged in the declaration to have been done maliciously. § 5. And no damages or costs, when the plaintiff shall be proved to have been guilty.

A defendant is entitled to a *copy* of the conviction, and the justice is bound to give it to him, if requested. *R. v. Midlum*, *Burr.* 1720.; but the justice is not thereby precluded from drawing up and returning a conviction in a more formal shape; for this last is to be taken as the only authentic record of the proceedings. *R. v. Barber*, 1 *East.* 82. *R. v. Allan*, 15 *East.* 332.

A justice should, in all cases, return a conviction to the sessions, whether the party appeal or not, or whether an appeal is or is not

given, in order that the crown may not be deprived of its share of forfeitures. *R. v. Eaton*, 2 *T. R.* 285.

CORONER.

THE lieutenant governor has the appointment of all coroners in this province, who are appointed by commission under the seal of the province, as coroners of the district.

The office and power of a coroner are, like those of a sheriff, either judicial or ministerial; but principally judicial. This is in great measure ascertained by statute 4 *Edw.* 1. *de officio coronatoris;* and consists, first, in inquiring, when any person is slain, or dies suddenly, or in prison, concerning the manner of his death; and this must be *super visum corporis;* for if the body be not found, the coroner cannot sit. *Bl. Com. b.* 4. *p.* 348. The ministerial office of the coroner is only as the sheriff's substitute; for when just exception can be taken to the sheriff, for suspicion of partiality, (as that he is interested in the suit, or of kindred to either plaintiff or defendant) the process must then be awarded to the coroner, instead of the sheriff, for execution of the King's writ. *Ib.* 349.—*See further on this subject, title* JURY.

By stat. 3 *H.* 7. *c.* 1. the coroner is entitled to a fee of 13s. 4d. upon every inquisition taken in *murder*, out of the goods and chattels of the slayer; and by statute 25 *G.* 2. *c.* 29. for every inquisition (not taken upon view of a body dying in gaol) 20s.; and also 9d. for every mile he shall be compelled to travel to take such inquisition; and for every inquisition taken on a body dying in prison, so much—not exceeding 20s.—as the justices in sessions shall allow. The above fees to be paid out of the county rates—(in England); and in this province, are usually ordered by the sessions, to be paid out of the district funds.

COSTS.

BY statute 18 *G.* 3. *c.* 19. Where any complaint shall be made before any justices, and any warrant shall issue, it shall be lawful for any justice who shall have heard and determined the complaint, to award costs to be paid by either of the parties, as to him shall seem fit, to the party injured; and in case any person ordered by the justice to pay such money, shall not forthwith pay down or give security for the same to the satisfaction of the justice, it shall be lawful for the said justice, by warrant, to levy the said sum by distress and sale of goods; and where goods cannot be found, to commit such person to the house of correction, to be kept to hard labour, for not exceeding one month, nor less than ten days, or

until such money, together with the expenses attending the commitment be first paid. § 1.

Upon the conviction of any person upon any penal statute, where the penalty shall amount to or exceed five pounds, the costs shall be deducted by the justice, according to his discretion, out of the penalty, so that the deduction shall not exceed one fifth of the penalty; and the remainder of the penalty shall be paid to the person entitled to the whole in case this act had not been made. § 2.

The forms to this act annexed shall be used. § 3.

Form of awarding Costs.

County or Borough, &c. to wit. } I —— one [*or*, we —— being two] of his Majesty's justices of the peace in and for the —— aforesaid, in pursuance of an act, made in the eighteenth year of his Majesty King *George* the third, "entituled, an act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions; for the payment of the charges of constables in certain cases; and for the more effectual payment of charges to witnesses and prosecutors of any larceny, or other felony; on the complaint of —— [here state the names of the parties, and the offence generally, and the date], against —— for —— which said complaint was heard and determined by —— on the —— day of —— do award the following costs to be paid by —— viz. [here state the costs.] Given under —— hand and seal [*or* hands and seals] this —— day of —— in the year of our Lord ——."

Form of Warrant of Distress and Sale.

—— } To the constable of —— and to all other his Majesty's
to wit. } constables in and for —— in —— aforesaid.

Whereas —— of his Majesty's justices of the peace in and for the —— aforesaid, in pursuance of an act, made in the eighteenth year of his Majesty King *George* the third, "entituled, an act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions; for the payment of the charges of constables in certain cases; and for the more effectual payment of charges to witnesses and prosecutors of any larceny, or other felony; have awarded, on the —— of —— now last past, on the complaint of —— against —— for —— the following costs to be paid by —— viz. [here state the sum]: and whereas the said —— being ordered by —— the said justice [*or* justices] to pay such sum [*or* sums] as aforesaid, hath not paid down or given security for the same, to the satisfaction of —— the said justice [*or* justices]: these are therefore to command you, and each and

every of you, to levy the said sum of —— by distress and sale of the goods and chattels of the said —— and —— do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within —— days, unless the said sum of —— for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby also commanded to certify unto —— what you shall have done by virtue of this —— warrant. Given under —— hand and seal [*or* hands and seals] at —— the —— day of —— in the year of our Lord ——."

Constable's Return thereon, for want of Distress.

To Wit. } I, ——, constable of ——, do hereby certify to —— justice (or justices) of the peace of —— that I have made diligent search for, but do not know, nor can find any goods and chattels of ——, by distress and sale whereof I may levy the sum —— pursuant to —— warrant for that purpose, dated the —— day of ——. Given under my hand, this —— day of ——, in ——.

Commitment thereupon to the House of Correction.

To Wit. } To the constable of ——, and also to the keeper of the house of correction at ——.

Whereas in pursuance of an act made in the eighteenth year of his Majesty King *George* the third, entituled, "an act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions; for the payment of the charges of constables in certain cases; and for the more effectual payment of charges to witnesses and prosecutors of any larceny, or other felony," —— of his Majesty's justices of the peace, in and for the said —— did issue —— warrant of distress and sale, directed to —— of —— constable of the said —— of ——, ordering the said constable to levy the said sum of —— of the goods and chattels of the said —— in manner and form as therein is mentioned: and whereas it appears to —— by the return of —— constable of —— dated the —— day of —— that he hath made diligent search, but doth not know of, nor can find any goods and chattels of the said —— by distress and sale whereof the said sum of —— may be levied, pursuant to the said warrant: these are therefore to command you, the said constable of —— to apprehend the said —— and convey the said —— to the said house of correction at —— and to deliver the said —— there to the said keeper of the said house of correction:

and these are also to command you, the said keeper of the said house of correction, to receive the said —— into the said house of correction, and there to keep to hard labour for the space of —— from the date hereof, or until such sum of —— together with the expenses attending the commitment of the said —— to the said house of correction, be first paid, or until the said —— be discharged by due course of law. Given under my hand and seal, at —— the —— day of —— in the year of our lord 18—

COUNTY COURTS.

See title "Outlawry," and stat. 55 *G.* 3. *c.* 2. 3 *W.* 4. *c.* 6.

COURT OF REQUESTS.

By statute 3 *W.* 4. *c.* 1. entitled, "an act to repeal part of, amend and reduce to one act of parliament, the several laws now in force in this province, for the recovery of small debts; and to extend the jurisdiction of the court of requests within the same." Two or more commissioners, to be appointed by the lieutenant governor, are empowered to hold a court of justice, to be called a court of requests, on the first and third Saturday of each month, to hear and determine all matters of debt or contract, when the demand doth not exceed £10. and to give and pronounce such judgment, and decree, and award execution thereupon, with costs, as to them shall seem just in law or equity; and that the acts, orders, judgments and decrees, of the said commissioners, shall be final between the parties.

Commissioners Fees.

For every final judgment, two shillings.

Clerk's Fees.

For recording judgment, six pence: for every summons or subpœna, six pence: for every copy of judgment, (if demanded), one shilling: for every execution, one shilling.

Bailiff's Fees.

For serving every summons or subpœna, within one mile of the clerk's house, one shilling: for every mile in travelling to execute process or execution, when the distance exceeds one mile, four pence: for serving a writ of execution, seizing and selling effects, and making return, if the judgment does not exceed £5., two shil-

lings and six pence: ditto, ditto, if judgment exceeds £5., in like proportion.

The allowance to be paid to witnesses not to exceed two shillings and six pence per day, at the discretion of the commissioners.

CRIMINAL LAW.

By statute 14 *G.* 3. *c.* 83. § 11. It was enacted, that the criminal law of England should continue to be administered and observed as law in the province of Quebec, (of which the province of Upper Canada then formed a part) as well in the description and quality of the offence, as in the method of prosecution and trial, and the punishments and forfeitures thereby inflicted, to the exclusion of every other rule of criminal law, or mode of proceeding, which prevailed in the said province before the year 1764; subject to such alterations as the provincial legislature might thereafter make therein.

Since the division of the said province into the present provinces of Upper Canada and Lower Canada, by stat. 40 *G.* 3. *c.* 1. (of this province) entitled, "an act for the further introduction of the criminal law of England into this province," it is enacted, that the criminal law of England as it stood on the 17th day of Sept. 1792, shall be and the same is thereby declared to be the criminal law of this province." *(Note—the 32 G. 3. is inclusive.)*

CURRENCY.

By statute 2 *G.* 4. *c.* 13. entitled, "an act to establish an uniform currency throughout this province," it is enacted, that no interest shall be recovered on any bond, note, or other instrument, made after that date, (1st July, 1822) in which the penalty or sum payable shall be expressed in New-York currency, nor any costs allowed in actions brought thereon; and after the 1st July, 1822, no rendering of an account shall be considered a demand, nor shall any admission be given in evidence as an acknowledgment of debt, unless such account shall have been rendered in provincial currency; and no shop-books shall be given in evidence unless made in provincial currency.

CUSTOMS.

By an imperial statute 6 *G.* 4. *c.* 114, entitled, "an act to regulate the trade of the British possessions abroad," the following goods are prohibited to be imported into this province under certain restrictions, viz.

Gunpowder; arms; ammunition or utensils of war; except from the United Kingdom, or from some other British possession.

Tea prohibited to be imported except from the United Kingdom, or from some British possession in America, unless by the East India Company, or with their license.

Fish, dried or salted; train oil; blubber, fins, or skins; the produce of creatures living in the sea, prohibited to be imported except from the United Kingdom, or from some other British possession, or unless by British ships fitted out from the United Kingdom, or from some British possession, and brought in from the fishery, and except herrings from the Isle of Man, taken and cured by the inhabitants thereof.

Base or counterfeit coin; books, such as are prohibited to be imported into the United Kingdom, prohibited to be imported.

Duties:

Payable upon goods, wares and merchandize, not being of the growth, produce or manufacture of the United Kingdom, or of any of the British possessions in America, or the Island of Mauritius, imported or brought into any of the British possessions in America, by sea, or by inland carriage, or navigation.

For every 1000 shingles, not more than 12 inches in length,	£ 0	7	0
" every 1000 shingles, being more than 12 inches in length,	0	14	0
" every 1000 red oak staves, or headings,	0	15	0
" every 1000 white oak staves, or headings,	0	12	6
" every 1000 feet of white, yellow, or pitch pine lumber, of one inch thick,	1	1	0
" every 1000 feet of other kinds of wood or lumber,	1	8	0
" every 1000 wood-hoops,	0	5	3
Horses, mules, asses, for every £100. of the value,	10	0	0
Spirits, viz.:—brandy, geneva, or cordials, for every gal.	0	1	0
And further, the amount of any duty payable for the time being, on spirits, the manufacture of the United Kingdom.			
Wine, imported in bottles, the tun, containing 252 gals.	7	7	0
And further, for every £100. of the true and real value thereof,	7	10	0
And for every dozen of foreign quart bottles in which such wine may be imported,	0	1	0
Not in bottles, for every £100. of the true value thereof,	7	10	0
Rum, for every gallon,	0	0	6

And further, the amount of any duty payable, for the time being, on rum, being the produce of any of the British possessions in South America or the West Indies.

Alabaster, anchovies, argot, anniseed, amber, almonds, brimstone, botargo, boxwood, &c. &c. for every £100. of the true and real value thereof.....	7	10	0
Clocks and watches, leather manufactures, linen, musical instruments, wires of all sorts, books and papers; for every £100. of the true and real value thereof,	30	0	0
Glass and manufactures, soap, refined sugar, sugar candy, tobacco manufactured, for every £100. of the true and real value thereof,.....	20	0	0
Hay and straw, coin and bullion, diamonds, salt, fruit and vegetables, fresh, cotton wool, goods, the produce of places within the limits of the East India company's charter; horses of persons travelling into or through the province of Upper Canada, and necessarily used in removing themselves, their families, and baggage; cord wood for fuel, and saw logs brought into Upper Canada; herrings taken and cured by the inhabitants of the Isle of Man, and imported direct from thence; any sort of craft, food and victuals, except spirits, and any sort of clothing and implements, or materials fit and necessary for the British fisheries in America, imported into the place at or from whence such fishery is carried on, in British ships; rice and Indian corn, and lumber, the produce of any British possession on the west coast of Africa, and imported direct from thence,.....	duty free.		
Goods, wares or merchandize, not being enumerated or described, nor otherwise charged with duty by this act; for every £100. of the true and real value thereof,.....	15	0	0

And if any goods shall be imported contrary to this act, or removed before the duties are paid, such goods shall be forfeited, together with the vessel, boat, or carriage and the horses, or other cattle, in or by which such goods shall be imported, or so removed. § 31. And every person who shall assist, or be concerned in the unshipping, landing or removal, or in the harboring of such goods, or into whose hands or possession the same shall knowingly come, shall forfeit treble the value thereof, or the penalty of £100. at the election of the officers of the customs. § 51. One-third of the forfeitures and penalties under this act, after deducting the charges of prosecution, shall go to the collector, for the use of his Majesty; one-third to the lieutenant governor, and the remaining third to the party that shall sue. § 68. All suits for penalties may be brought within three years. § 69. Proof that the goods were lawfully imported, shall lie on the party. § 61. No action against

any officer of the customs shall be commenced against any officer of the customs, until after one calendar month's notice. § 63. And must be commenced within three months. § 64.

By subsequent statutes 7 & 8 *G.* 4. *c.* —. and 1 *W.* 4. *c.* 24. beef, pork, cocoa nuts, corn or grain, unground, meal, flour, not made of wheat, bread, biscuit, rice and live stock, wheat, flour, pork, hams, bacon, wood or lumber, may be lawfully imported *duty free.*

DEBTORS—*(Detention of)*

By statute 10 *G.* 4. *c.* 2. any justice of the peace, upon affidavit before him made, may issue his warrant under his hand and seal, and cause a defendant to be arrested and detained, until he can be served with a proper process of the court in which the plaintiff may intend to proceed with his suit, for the recovery of his debt; which affidavit shall be made by the plaintiff, his, her, or their servant, clerk or agent, and may be in the form hereinafter mentioned, or to a similar effect,—such detention, in no case to exceed four days. § 2. The sheriff, upon such warrant, is required to receive and detain such debtor, for any period not exceeding forty-eight hours. § 2. This act to remain in force for two years, and to the end of the next session.

Form of the Affidavit.

—— District, } A. B. of the township of —— in the —— dis-
to wit. } trict —— maketh oath and saith, that C. D. is justly and truly indebted to him (or her) this deponent (as the case may be) in the sum of £—— of lawful money of Upper Canada; and deponent further saith, that he (or she) is apprehensive that the said C. D. will leave this province without satisfying the said debt before the regular process can issue to hold him to bail; and that he (or she) does not sue out process from any vexatious or malicious motive whatsoever.

Sworn before me, at —— in the —— district, this —— day of —— 18—

Note.—No person can be arrested for any debt under 40s.

Form of the Warrant.

To —— a Constable of the District of ——

These are to command and require you —— to take into your custody C. D. and his person detain in security, until the expiraton of four days from the time of actual arrest, A. B. having made oath before me, as a justice of the peace, that the said C. D. is indebted

to him in the sum of £ ——; and for so doing this shall be your sufficient authority.

Dated at —— in the district of —— this —— day of —— 18—

E. F. *J. P.* *(L. S.)*

By sec. 4. the following fees may be taken :—

Justices of the peace for each affidavit, ...	£ 0	2	6
For each warrant, ...	0	2	6
Constable apprehending debtor, ...	0	2	6
Every mile of travel, ...	0	0	4
For actual detention in charge, per diem, ...	0	5	0

This act was allowed to expire, but is now again revived and continued, by the 4 *W.* 4. *c.* 6. for four years, and to the end of the next session.

DEER.

By Statute 2 *G.* 4. *c.* 17. No person shall kill any deer in this province, *ferœ naturæ*, after the 10th January until the 1st July in every year, under the penalty of 40s. to be recovered before any two justices ; one moiety to the province and the other to the informer. This act not to extend to Indians.

N. B. This act does not contain any power of distress or sale for the penalty.

Deserters.—see post title "*Soldiers.*"

Detaining Warrant.—see "*Debtors.*"

DISTILLERS.

By statute 34 *G.* 3. *c.* 12. § 11. distillers are not to sell or barter any quantity of distilled liquor, less than three gallons, nor shall the secretary of the province, or any of his agents, grant to a distiller a license to retail spirituous liquors.

DISTRESS.

To justify taking a distress, the party must have a regular warrant for so doing, and must take care that the things taken are distrainable, and that the distress is made in due time and place. *Co. Lit.* 47. All distresses must be made in the day time, unless in the case of cattle distrained *damage feasant*. 1 *Inst.* 142. *Bull. N. P.* 61. Persons making a lawful distress, may sell the same upon the premises, in like manner as may be done off the same. 2. *W.* & *M. Sess.* 1. *c.* 5.

Of Distress by Warrant of Justices of the Peace.

By statute 27 *G.* 2. *c.* 20. it is enacted, as follows;—In all cases where any justice of the peace is, or shall be required or impowered by any act of parliament, to issue a warrant of distress, for the levying of any penalty inflicted, or any sum of money directed to be paid by such act, it shall be lawful for the justice granting such warrant, therein to order and direct the goods and chattels so to be distrained, to be sold and disposed of within a certain time, to be limited in such warrant, so as such time be not less than four days, nor more than eight days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges for taking and keeping such distress, be sooner paid: and the officer making such distress shall and may deduct the reasonable charges of taking, keeping and selling, such distress, out of the money arising by such sale, and the overplus (if any) after such charges, and also the said penalty or sum of money shall be satisfied and paid, shall be returned, on demand, to the owner of the goods so distrained; and the officer executing such warrant, if required, shall shew the same to the person whose goods are distrained, and shall suffer a copy thereof to be taken.

When an act of parliament orders a distress and sale of goods, it is in the nature of an execution, and replevin will not lie. *Bac. Abr.* title "Replevin."

If, in seizing for the whole sum due, the first distress is found insufficient, from mistaking the value of the goods seized, a second distress may be made. *Burr.* 589.

Distress Warrant, where part of the Penalty goes to the Informer, and part to the Poor, i. e. *to the District.* see 11 *G.* 4. *c.* 1. (Toone.)

To the Constable of —— and to all other Constables in and for the Home District.

Home District, } Whereas A. B. of —— labourer, is duly con-
to wit: } victed before me J. C. esq. one of his Majesty's justices assigned to keep the peace, and also to hear and determine divers felonies, trespasses and other misdemeanors, in the said district committed, for that he the said A. B. on the — day of —— in the —— year of the reign of our sovereign lord William the fourth, did [*describe the offence as in the statute*] contrary to the form of the statute in such case made and provided, whereby he hath forfeited the sum of £— of lawful money of Great Britain. These are therefore to command you, forthwith to levy the said sum of £— by distraining the goods and chattels of him the said A. B. and if within the space of —— days (*not less than four nor*

more than eight days, by 27 Geo. 2. *unless otherwise directed by particular statute)* next after such distress by you taken, the said sum shall not be paid, together with the reasonable costs and charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the sum of £— part of the said sum of £— to C. D. of —— yeoman, who informed me of the said offence; and the sum of £— the remainder of the said sum of £— so forfeited, that you do pay to the treasurer of the said district, to be appropriated by him to the purposes of the said district, returning to him the said A. B. the overplus, on demand, the reasonable charges of taking, keeping and selling the said distress being first deducted: and you are to certify to me, with the return of this precept, what you shall have done in the execution hereof. Herein fail not. Given under my hand and seal at—— in the said district, the —— day of —— A. D. 18—.

The like, where part of the Penalty goes to the King. (Toone.)

As in the last precedent, till the words "arising by such sale," after which, add—that you do pay the sum of £— being one moiety, (if the act so direct) of the said sum of £— so forfeited, to me the said justice, for the use of his said Majesty, his heirs and successors; and £— being the other moiety, (or the remainder) of the said sum of £— so forfeited as aforesaid, that you pay to —— [as the act directs, if in several shares or appropriations, specify each].

Warrant of Distress for Penalty and Costs, where the Penalty has been mitigated. (Toone.)

To the Constable of —— in the Home District.

Home District, } Whereas by a certain conviction under our hands
to wit. } and seals, bearing date the —— day of —— 18—, one A. B. of —— was duly convicted before us, J. C. and S. P. esquires, two of his Majesty's justices of the peace in and for the home district, upon the information of C. D. of —— and on the oath of E. F. a credible witness in that behalf, of a certain offence committed by the said A. B. for that [*state the offence as in the conviction, to the words 'contrary to the statute, &c.'*] whereby, and by force of the statute in that case made and provided, the said A. B. was, for his said offence, adjudged to forfeit the sum of £— [*as in the conviction*]. And whereas, we the said justices seeing cause to mitigate and lessen the said penalty, do, at the request of the said A. B. according to the statute, mitigate and lessen the said penalty to the sum of £— over and above the reasonable

costs and charges of the said informer, by him laid out and expended in and about the said information and conviction, to be distributed and applied, one moiety thereof to the use of our lord the King, and the other moiety thereof to the said C. D. the informer, and which said costs and charges of the said C. D. the informer, we the said justices do allow, assess and adjudge, to him, with his assent, at the sum of £— of like lawful money, according to the statute in that case made and provided. These are therefore to command you, to levy the said sum of £— and also the said sum of £— the costs and charges aforesaid, of the said C. D. the informer, making together the sum of £— by distress and sale of the goods of the said A. B. and we do hereby order and direct, that the said goods and chattels which shall be so distrained, be sold and disposed of within six days from the time of making the said distress, unless the said sum of £— for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid: and you are hereby commanded to certify to us the said justices, what you shall do by virtue of this our warrant. Given under our hands and seals, this —— day of —— in the year of our Lord 18—.

Constable's Return of Warrant of Distress, to be indorsed on the Warrant. (Toone.)

W. S. constable of —— within mentioned, maketh oath, this —— day of —— 18— that he hath made diligent search for, but doth not know of, nor can he find sufficient goods and chattels of the within mentioned A. B. whereon to levy the within mentioned sum of £— as therein he is commanded.

Sworn, &c.

DISTRICT COURT.

By Statute 2 *G.* 4. *c.* 2. a District Court is established in every district, and authorised to hold plea in all matters of record, from 40s. to £15; and when the amount is liquidated or ascertained, either by the act of the parties or the nature of the transaction, then to the amount of £40; and also, in all matters of tort respecting personal chattels, when the damages to be recovered shall not exceed £15, and the title to the lands shall not be brought into question. The periods of sitting, or terms, for the said court in each and every year shall severally commence on the Monday in the week next but one preceding the week, and at the place in which the quarter sessions are held, and shall end on the Saturday in the same week.

DISTRICT FUNDS.

By Statute 8 *G.* 4. *c.* 4. Justices of the peace at their general quarter sessions next after the passing of this act, and yearly afterwards, are required to cause a true and correct statement, in detail, of all monies raised, levied and collected, for the year preceding, upon any rate or assessment, for the public use of the district, with a detail of the expenditures, together with the account for which the same is paid, to be published in some newspaper of the district, and a copy to be affixed in some conspicuous place on the court house; and that the expense of such publication shall be paid out of the district treasury, by order of sessions.

DISTRICT SCHOOLS.

By Statute 47 *G.* 3. *c.* 6. For the establishment of public schools the sum of £800 shall be annually paid as hereinafter mentioned. § 2. One school shall be kept in each district, and out of said £800 the sum of £100 shall be paid to every teacher. § 3. The public school for the western district shall be kept in the town of Sandwich; for the district of London at Vittoria, (see 48 *G.* 3. *c.* 16. § 1.)—for the district of Niagara in the town of Niagara; for the Home district in the town of York, (now city of Toronto)—for the district of Newcastle in the township of Hamilton, at such place as the trustees shall appoint; for the Midland district in the town of Kingston; for the district of Johnstown at Brockville, (see 59 *G.* 3. *c.* 4.)—and for the eastern district in the town of Cornwall. § 4. The lieutenant governor shall appoint the trustees, and the trustees shall nominate a fit person as teacher, and report such nomination to the lieutenant governor who may affirm or reject such nomination: the trustees may also remove any teacher, and nominate another, and report as aforesaid. § 5. Trustees authorised to make rules and regulations for the government of such schools. § 6. Salaries of the teachers shall be paid half yearly, for which the lieutenant governor may issue his warrant to the receiver general; such teachers producing a certificate of good conduct signed by the trustees, or the majority of them.

By statute 59 *G.* 3. *c.* 4. Provision made for establishing a public school in the district of Gore. § 2. And £100 per annum to pay the teacher. § 4. Annual public examinations shall be held in every district school previous to the annual vacation. § 5. Annual reports to be made by the trustees of district schools, after the public examination, to the lieutenant governor, to be laid before the legislature. § 6. Trustees empowered to send ten poor children to be taught gratis. § 7. To be drawn for by lot, viz:—the trus-

tees for the common schools shall return the names of one or more, not exceeding four, from each common scoool to the trustees of the district schools where they shall reside, and the number shall be drawn by ballot, at a special meeting to be openly held for the purpose. § 8. Vacancies shall be filled up by a fresh ballot. § 11. No more than £50 shall be paid to the teachers unless they have more than ten scholars. § 12. The form of the certificate required by the twelfth clause of the 47 *G.* 3. shall be as follows :—"At a public meeting of the trustees of the district school, upon due notice given for that purpose, a majority of the trustees being present, we certify," &c.

By statute 4 *G.* 4. *c.* 27. The like provision is made for a public school in the Bathurst district; and by statute 4 *G.* 4. *c.* 28. A public school in the district of Ottawa. § 3. To be kept at Longuiel, under the same regulations as other public schools; and by statute 1 *W.* 4. *c.* 7. § 9. A public school in the district of Prince Edward, so soon as the county of Prince Edward shall be erected into a separate district, to be kept in the township of Hallowell, under the like regulations as other district schools.

DOGS.

The stealing of dogs is not a *felony*, either at common law or by statute. 4 *Bl. Com.* 236.—but is punishable by the following statute :

By 10 *G.* 3. *c.* 18. if any person shall steal any dog or dogs, of any kind or sort whatsoever, from the owner, or from any person intrusted by the owner with such dogs; or shall sell, buy, receive, harbour, detain, or keep any such dog or dogs, knowing the same to have been stolen, every such person, convicted upon the oath of one witness, or his own confession, before two justices, shall, for the first offence, forfeit not exceeding thirty, nor less than twenty pounds, as to such justices shall seem meet, together with the charges previous to, and attending such conviction, to be ascertained by such justice before whom such offender shall be convicted; and in case such penalty shall not be forthwith paid, such justices shall commit the offender to the common gaol or house of correction, for not exceeding twelve nor less than six calendar months, or until the penalty and charges shall be paid; and if any person, having been convicted as aforesaid, shall afterwards be guilty of the like offence, and shall be thereof convicted in manner aforesaid, every such person shall forfeit not exceeding fifty, nor less than thirty pounds, as to such justices shall seem meet, together with the charges previous to, and attending such

conviction, to be ascertained by such justices before whom such offender shall be so convicted; which penalties shall be paid, one moiety to the informer, and the other moiety to the poor of the parish where the offence shall be committed; and upon non-payment thereof, such justices shall commit the offender to the common gaol or house of correction, for not exceeding eighteen, nor less than twelve months, or until the penalty and charges shall be paid; and such justices shall also order the offender to be publicly whipped, within three days after commitment, in the town wherein such gaol or house of correction shall be, between the hours of twelve and one of the clock. § 1.

It shall be lawful for one justice, upon information to him made for that purpose, to grant a warrant to search for any dog or dogs stolen, and in case any such dog, or the skin, shall upon such search be found, to take and restore every such dog, or such skin to the owner thereof; and the person in whose possession any such dog or skin shall be found (in case it shall appear that such person was privy to such dog having been stolen, or that such skin was the skin of any dog stolen) shall respectively be subject to the like penalties and punishments as persons convicted of stealing any dog or dogs, are herein before made subject to. § 2.

Justices may cause the conviction to be drawn up in the following words, or to the same effect: § 3.

Be it remembered, that on the —— day of —— in the year of our Lord —— A. B. is convicted before us —— of his Majesty's justices of the peace for the county of —— (specifying the offence, and the time and place when and where the same was committed, as the case shall be.) Given under our hands and seals, the day and year aforesaid.

Any person aggrieved by any thing done in pursuance of this act, may appeal to the justices of the peace at the next general quarter session, and within four days after the cause of complaint shall have arisen; such appellant giving fourteen days notice at least, in writing, of his intention to bring such appeal, and of the matter thereof, to the persons whose acts are complained against; and, within two days after such notice, entering into a recognizance before some justice, with two sufficient sureties, conditioned to try such appeal, and abide the order of, and to pay such costs as shall be awarded by the justices at such quarter session: and the said justices at such session, shall finally determine the appeal in a summary way, and award costs to the parties, as they shall think proper; and the determination of such quarter sessions shall be final; and no order or other proceedings shall be quashed for want of form, or be removed by *certiorari*. § 4.

A mastiff going at large unmuzzled from the ferocity of his nature being dangerous, seems to be a common nuisance, and the owner may be indicted. 1 *Burn.* 918.

DOWER.

THE wife is entitled by law to be endowed of one-third part of all such lands and tenements of which her husband was seized in fee-simple or fee-tail, at any time during the coverture or marriage: to hold the same during the term of her natural life. *Co. Litt.* 31. But that she might be entitled thereto, she must be the wife of the party at the time of his decease; for if she be divorced *a vinculo matrimonii*—that is, from the band of matrimony, she shall not be endowed. By statute 13 *Edw.* 1. *c.* 34. if a woman elope from her husband and live with an adulterer, she shall lose her dower, unless her husband be voluntarily reconciled to her. And the widows of traitors, or persons attainted of treason, are barred of dower; but not the widows of felons. 2 *Black*, 131. An alien cannot be endowed, unless she be queen consort; for no alien is capable of holding lands. *Co. Litt.* 31. The wife's dower may also be excluded by the husband taking a conveyance to himself and a trustee. *Co. Litt.* 31. And a wife cannot be entitled to dower out of an estate which at the time of her marriage was subject to a mortgage in fee. *Co. Litt.* 208. *Note* 1. 13 *Edit.* But upon the mortgage being paid off, and the estate re-verting to her husband, the wife then will become dowable.

The mode of Barring Dower.

By statute 3 *W.* 4. *c.* 10. it is enacted, that it shall be lawful for any person or persons resident within this province, entitled to dower of and in any lands, tenements, or hereditaments, to appear before any two of his Majesty's justices of the peace of the district wherein such person or persons may be resident, and acknowledge her consent to be barred of her right of dower of, in, and to any lands, tenements, or hereditaments, within this province; which two justices shall have power and authority to grant a certificate to the following effect:—

We, A. B. and C. D. of the district of—— in the province of Upper Canada, esquires, two of his Majesty's justices of the peace in and for the said district, do certify, that E. F. wife of G. E. personally appeared before us, and being duly examined by us, touching her consent to be barred of her right of dower of and in the lands in the within deed mentioned, it did appear to us that the said E. F. did give her consent thereto freely and voluntarily,

without coercion, or fear of coercion, on the part of her husband or any other person whomsoever.

Dated at ——. A. B. } C. D. } *J. P.*

Which certificate shall have the same force, and be as valid, as if the same had been made and certified under the provisions of an act passed in the 37 *Geo.* 3. entitled, "an act for the more easy barring of dower."

§ 2. Justices' fee—2s. 6d.

ELECTIONS.

See Constitutional Act 31 *G.* 3. *c.* 31.

By statute 39 *G.* 3. *c.* 14. any member accepting the office of registrar, shall thereby vacate his seat.

By statute 43 *G.* 3. *c.* 41. members for counties shall be entitled to ten shillings per day during their actual attendance in parliament, and in going to, and returning from the house of assembly; to be levied by an assessment on the parishes, townships, or places within the county or riding represented by such member.

By statute 48 *G.* 3. *c.* 1. § 26. members shall be exempted from serving in the militia, unless in time of actual service.

By statute 60 *G.* 3. *c.* 2. after noticing the rapid increase of the population in this province, and that the representation in the commons house of assembly was deemed too limited, it is enacted, that after the end of that parliament, every county then formed or organized, or which should be thereafter formed or organized, the population of which should amount to 1000 souls, shall be represented in the provincial parliament by one member, and when the population in such county shall amount to 4000, by two members; and that every town in which the quarter sessions are holden, containing a population of 1000 souls, shall be represented by one member. § 3. The population shall be ascertained by the returns of the several town clerks, in the several towns or townships of the province, transmitted to the governor. § 4. Whenever a university shall be organized, the same shall also be represented by one member, the electors, besides the qualification by law required, being also members of convocation. § 5. invests the governor with the power of issuing writs for the counties and university, in like manner as provided by the 31 *G.* 3. *c.* 31. § 18. § 6 & 7. This act shall not reduce the number of members now returned for any county; and when any county shall contain less than 1000 souls, the same shall be attached to the next adjoining county in which there shall be the smallest number of souls. § 9.

No person qualified to vote for a town member, shall vote for the county upon the same freehold. § 10. The population of any town returning a member shall not be considered as a part of the number of souls to give the county two members.

By statute 4 *G.* 4. *c.* 3. persons having resided in a foreign country, or taken the oath of allegiance to a foreign state, are declared ineligible as members, unless they shall have resided in this province seven years next before the election at which they shall be chosen: and by § 4 & 5. Any person so offering themselves, shall incur the penalty of £200. and a further sum of £40. if they shall presume to sit. § 6. Persons who have abjured allegiance to his Majesty, or held certain offices in the United States, or been convicted of offences in a foreign country, shall be disqualified from being members: and by § 6. A member to be qualified, must possess freehold lands in the province to the assessed value of £80. besides taking the following oath, if required.

I, A. B. do swear, that I truly and bona fide have such a freehold estate, [*here describe the estate*] over and above all incumbrances that may affect the same, and am otherwise qualified according to the provisions of law, to be elected and returned to serve as a member in the commons house of assembly, according to the tenor and true intent and meaning of the act of parliament in that behalf, and that I have not obtained the same fraudulently, for the purpose of enabling me to be returned member to the commons house of assembly of this province. So help me, God.

Sec. 8. If any candidate shall have resided in the United States, he shall, if required, also take the following oath:—

I, A. B. do sincerely and solemnly swear, that during my residence in the United States of America, I have not taken or subscribed any oath of abjuration of allegiance to the Crown of Great Britain; and further, that during my said residence, I have not held the office or appointment of senator, or member of the house of representatives of the said United States, or of either of the said United States, respectively, or held or enjoyed any office in any of the executive departments of state in the said United States, or state, respectively. So help me, God.

Sec. 19. The oaths required by this act, shall be administered by the sheriff, mayor, bailiff, or other officer or officers, who shall have to take the poll or make the return at such election, who shall certify the same into the court of king's bench, within three months afterwards, under the penalty of £200. and the election of any candidate refusing to take the oaths shall be void. § 12. relates to residence in a foreign country, and is repealed by 4 *W.* 4. *c.* 14. § 13. No person shall vote in respect of any estate suffi-

cient to qualify him by law, not having come to him from the crown, descent, devise, or marriage, unless the deed of conveyance shall have been registered three calendar months before the election, or unless he shall have been twelve calendar months in possession and receipt of the rents and profits, next before such election. § 14. No election shall continue more than six days, (Sunday, Christmas day and good Friday, excepted).

The 4 *W.* 4. *c.* 14. repeals the 12. & 15. § 4 *G.* 4. *c.* 3. and by § 3. enacts, that before any elector shall vote at any election, he shall, (if required) in addition to the oath required by the 31 *G.* 3. *c.* 31. take the following oath :—

I, A. B. do swear, that the estate in right of which I vote at this election, is [*here describe the estate, as the case may be*] which I hold by grant from the crown, *(descent, devise, marriage, or conveyance, as the case may be)* and *(in case such estate shall have been derived otherwise than by grant from the crown, descent, marriage or devise)* that I have been in actual possession, or in the receipt of the rents and profits thereof, to my own use, by virtue of such conveyance, above twelve calendar months; or, *(as the case may be)* that the conveyance to me of the same has been registered three calendar months.

Returning Officers.

By statute 33 *G.* 3. *c.* 12. the lieutenant governor shall nominate and appoint a returning officer for every county or riding, division or town, within the province; but that no person shall be obliged to execute the office any longer than one year. § 3. This act shall continue in force seven years. (Revived and continued by 40 *G.* 3. *c.* 5.; 48 *c.* 5.; 52 *c.* 11. 1*st sess.*; 56 *c.* 4.; 59 *c.* 23.; by 4 *G.* 4. *c.* 2.; and now made perpetual by the 3 *W.* 4. *c.* 12.)—which also provides for the following fees and expenses, to the returning officer, to be paid by the treasurer of the district:

For each day's attendance in taking the poll,.....	£1	5	0
For a poll clerk, per diem,.....	1	0	0
For hustings, (when necessary).....	5	0	0
For two constables, each, per diem,.....	0	10	0

§ 3. That a poll-book shall be kept by the returning officer, in all cases where a poll shall be demanded, in which a true and correct state of the poll shall be inserted, according to the form mentioned in the act; of which poll-book the returning officer shall keep a correct copy, and shall transmit the original, with the writ of election and return, to the clerk of the crown in chancery, within ten days after the election, upon oath, to be

administered by any justice of the peace, or by a commissioner of the king's bench.

EMBRACERY,

Is an attempt to influence a jury corruptly to one side by promises, persuasions, entreaties, money, entertainments, and the like. The punishment for the person embracing is by fine and imprisonment; and for the juror so embraced, if it be by taking money the punishment is (by divers statutes of the reign of *Edw.* 3.) perpetual infamy, imprisonment for a year, and forfeiture of the tenfold value. *Bl. Com. p.* 140. 15. *Ed.*

ESCAPE.

Where a person hath another in lawful custody, upon an arrest, whether made by himself or another, if he suffer him to go at large before he is delivered by lawful authority, it is an escape, for which he is punishable; but the arrest must be for a real, and not a supposed crime. 2 *Haw. c.* 19. § 2. And the imprisonment must be for a criminal offence. *Ib.* § 3. And a gaoler is guilty of the offence, if he give a prisoner more liberty than the law allows; or, if he suffer the prisoner to go out for a time, though he afterwards return. *Ib.* § 5. and *Dalt. c.* 159. Where a person is found guilty on an indictment, of a negligent escape, he is punishable by fine and imprisonment, according to the quality of the offence. 2 *Haw. c.* 19. 1 *Hale*, 600. 604. And if a voluntary escape, he is punishable in the same degree as the offence of which the party is guilty; but no one shall be deemed guilty but the actual offender. 2 *Haw. c.* 19. § 23.

By statute 16 *G.* 2. *c.* 31. to assist a prisoner convicted of treason or felony, to attempt an escape, is felony, and subjects the offender to transportation for seven years; and if the party be committed for petit larceny, or on a civil process for debt, amounting to £100, he shall be guilty of a misdemeanor, and liable to fine and imprisonment; and for conveying any disguise, or instrument, or arms, to facilitate the escape of prisoners convicted of, or committed for treason or felony, the offender shall be transported for seven years; or if for petit larceny, or civil process for a debt &c., amounting to £100. he shall be deemed guilty of a misdemeanor, and be liable to fine and imprisonment. § 2 & 3. And assisting a felon to escape from a constable, is by this statute also made felony, and subjects the offender to transportation for seven years. *Ib.*

This statute does not extend to cases where an *actual escape* is made, but only to cases where an *attempt* is made, without effecting the escape. *R. v. Tilley, and others, O. B. Sess.* 1795.

Warrant to apprehend a person for Escaping from the House of Correction. (Toone.)

To the Constable of —— in the Home District.

Home District, to wit. } Forasmuch as A. B. keeper of the house of correction at —— in —— hath this day made information and complaint, upon oath, before me, J. C. esquire, one of his Majesty's justices of the peace, acting in and for the home district, that C. D. hath unlawfully and wilfully escaped from the house of correction at —— aforesaid, and from and out of the custody of him the said A. B. the keeper thereof, before the expiration of a certain term, for which he the said C. D. was ordered to be imprisoned and kept to hard labour therein: These are therefore to command you, the said constable, forthwith to apprehend and bring before me, or some other of his Majesty's justices of the peace for the said district, the body of the said C. D. to answer unto the said complaint, and to be further dealt with according to law.

Given under my hand and seal, &c.

ESTREAT.

An Estreat, (from *extractum*) is a true copy or extract of some original writing or record, containing an entry of fines or amerciaments imposed by a court of record, or other competent authority; but when applied to a recognizance itself is *extracted* or taken out from among the other records, and sent up to the exchequer. 4. *Bl. Com.* 253. By the 22 & 23 *C.* 2. *c.* 22. all clerks of the peace are bound under the penalty of £50. to deliver to the sheriff yearly, a perfect estreat of all fines &c.; but as this statute more particularly refers to the mode of collecting the same in England, which differs from the practice in this province, it can scarcely be said that this, and other statutes relative to estreats, apply to this province. The law, as it now stands, with regard to estreats, and *recognizances* in particular, is very defective; and in consequence, forfeited recognizances are seldom enforced, from the circuitous method which the public prosecutor is obliged to adopt in order to enforce the payment. An amendment of the law on this subject is much required, and would have, probably, its due operation on crime, by lessening, in some degree, the number of cases,

when it shall be found that a recognizance, instead of being a mere *form*, as it now is, will in fact be a real and substantial pledge—easily and expeditiously enforced, upon forfeiture.

At present, the practice is, for the clerk of the peace to make his return, which may be in the following form, upon which a prosecution by *scire facias* is commenced in the king's bench, to recover the amount.

Form of the Estreat.

Home District, } An extract of all the issues, fines, amerciaments
to wit. } and recognizances, set, lost, imposed and forfeited, to our sovereign lord the King, at the general quarter sessionsof the peace of our said lord the King, holden at —— in, and for the said home district, on —— the —— day of —— in the —— year of the reign of —— before —— esquires, and others, justices of our said lord the King, assigned to keep the peace in the said district, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said district committed, —— esquire, clerk of the peace for the district aforesaid, then and there attending.

Of A. O. late of the township of —— in the said district, labourer, for a trespass and assault at the township aforesaid, whereof he is indicted and convicted; his fine set at five shillings, which he paid to the sheriff in court,	£0	5	0
Of B. D. of —— in the said district, yeoman, because he came not now here to answer to such things as against him, on the part of our said lord the King, should be objected, as by a certain recognizance taken before J. P. esquire, one of the justices of our said lord the King assigned to keep the peace in the said district, he undertook,	10	0	0
Of P. Q. of —— in the said district, yeoman, one of the pledges of the said B. D. because he had him not to answer as above,	5	0	0
Of R. S. of —— in the said district, yeoman, the other of the pledges of the said B. D. for the like,	5	0	0

EVIDENCE.

Evidence, in its general sense is the testimony of witnesses, given upon an issue joined between parties in a civil or criminal suit. 1 *Inst.* 283. In general, a person is a competent witness unless interested in the event of the suit, either directly or indirectly. 7 *T. R.* 62. and by the common law informers who participate in any penalty are not competent witnesses; but they are sometimes rendered so, by act of parliament in particular cases.

1 *Ph. Ev.* 117. The confession of a defendant taken on an examination before justices, is allowed to be evidence against the party confessing, but not against third persons. 2 *Haw. c.* 46. § 3. The distinction between a *credible* and a *competent* witness, is, that the former is not disabled from being produced and sworn, but the *credit* of his testimony depends upon his moral character; the latter may be disabled by interest, and other causes, from giving evidence, and on that account is *incompetent.* 2 *H. H.* 276, 277.

If a person be convicted of treason, felony, forgery, perjury, subornation of perjury, attaint of false verdict, and other offences of the same description, which involve the charge of falsehood, and affect the administration of justice, he is incompetent to give evidence. So, if convicted of bribing a witness to absent himself and not give evidence; barratry or conspiracy to accuse another of a capital offence. *Russell on Cr.* 592; 593. The incompetency must be proved by the production of the record of conviction and judgment. *Gilb.* 128; 129. The admission of the witness himself that he had been convicted of grand larceny, and was then under sentence, was held insufficient. 3 *East.* 78. And an admission by a witness that he has been guilty of perjury, affords no objection to his competency, whatever effect it may have upon his credit.—*R. v Teal.* 11 *East.* 309: and by stat. 9 *Ann. c.* 14; 15. a person convicted of winning by fraud or ill practice in certain games is rendered incompetent. The incompetency arising from infamy may be removed—1. by endurance of punishment—2. by pardon—3. by reversal of the judgment. By statute 31 *G.* 3. *c.* 35. No person shall be incompetent by reason of a conviction for petit larceny,

A witness cannot be asked any question, the answer to which would criminate himself; but he may be asked whether he has not been in the pillory for perjury. 4 *T. R.* 440, An infant 14 years of age, and even under, if of competent discretion, may be sworn to give evidence. 2 *H. H.* 278. The deposition of a witness taken *extra judicially* before a magistrate is not evidence. *Leach*, 397. Husband and wife are not admitted as evidence either for or against each other, except in treason; but in polygamy (for the second marriage being void) the second wife may be admitted as a witness. A wife may also be permitted to swear the peace against her husband, and *vice versa. Buller, N. P.* 286. A woman living with a man as his wife, though not actually so, cannot be examined as a witness on his behalf. *Campbell, v Twemlow.* 1 *Price*, 81. 1 *Phil. Ev.* 82. Quakers, Menonists and Tunkers, &c. are admissible as witnesses upon their simple affirmation. 10 *G.* 4. *c.* 1.

EXAMINATION.

By statute 3 *H.* 4. *c.* 3. § 2. justices of the peace, before they shall admit any person to bail, in cases of felony, shall take the examination of such person in writing.—*See further on this subject, title "Bail." See also title "Justice of the Peace"—post.*

EXECUTION.

Execution is the last stage of criminal proceedings. This must, in all cases, be performed by the sheriff, or his deputy, whose warrant for so doing was anciently by precept, under the hand and seal of the judge. For a long time past, however, it has been the established practice for the judge to command execution to be done without any writ. The usage is for the judge to sign the calendar or list of all the prisoners, with their separate judgments in the margin, which is left with the sheriff. Thus, for a capital felony, it is written opposite to the prisoners name—"*Let him be hanged by the neck*";—formerly, in the days of latin and abbreviation—*sus. per coll.* for *suspendatur per collum.* This is the only warrant which the sheriff has for so material an act as taking away the life of another. 4 *Bl. Com.* 403. Upon receipt of this warrant, the sheriff is to do execution within a convenient time, which in the *country*, except in cases of murder, is left at large. In all cases of murder, it is enacted by the 25 *G.* 2. *c.* 37. that the judge shall, in his sentence, direct execution to be performed on the next day but one after sentence passed, unless the day be Sunday; but otherwise, the time and place of execution are by law no part of the judgment. The place, however, ought to be somewhere in the county where the criminal was tried and convicted—unless the record of attainder be removed into the king's bench: which court may award execution in the county where it sits. 3 *Inst.* 31. 211. 217. 4 *Bl. Com.* 404. If upon judgment to be hanged by the neck till dead, the criminal be not thoroughly killed, but revives the sheriff must hang him again, for the former hanging was no execution of the sentence; and if a false tenderness were to be indulged in such cases, a multitude of collusions might ensue. 2 *Hale*, 412. 2 *Haw.* 463. 4 *Bl. Com.* 406. The body of a traitor or felon is, in strictness of law, forfeited to the King, by the execution, and he may dispose of it as he pleases; but it is usual in all cases, except *murder*, to give up the body for interment. Execution may be avoided by a *reprieve*, or a *pardon;*—the former is only temporary, but the latter is permanent. Every judge who hath power to order

execution, hath also power to grant a reprieve. 2 *Hale*, 412. When a woman *quick* with child is condemned, although this is no cause to stay the judgment, yet it is good cause to respite the execution until she be delivered. Upon this plea being made, the judge must direct a jury of twelve matrons, or discreet women, to inquire the fact; and if they bring in their verdict *quick with child*—for barely *with child*, unless it be alive in the womb, is not sufficient—execution shall be stayed generally till the next assizes, until she is either delivered, or proves, by the course of nature, not to have been with child at all. 4 *Bl. Com.* 395. If a prisoner become *non compos mentis* between the judgment and award of execution, the judge ought in this case also to reprieve him, for *furiosus solo furiore punitur;* and the law knows not but he might have offered some reason, if in his senses, to have stayed the execution. *Ibid.* Execution may be also avoided by a plea of diversity of persons, viz.—that he is not the same that was attainted, and the like. In this case, a jury shall be impannelled to try the facts. In all such collateral issues, the trial must be *instanter*, and no time allowed the prisoner to make his defence, or produce his witnesses, unless he will make oath he is not the person attainted. *Fost.* 42.

By statute 3 *W.* 4. *c.* 4. § 19. instead of the former punishment for *treason*, viz. disembowelling the traitor, and dividing his body into four quarters, it is enacted that the sentence to be pronounced shall be, "that such person be drawn upon a hurdle to the place of execution, and be there hanged by the neck till such person be dead, and that afterwards the body of such person shall be dissected and anatomized"; and when any person shall be convicted of *murder*, his body shall be delivered by the sheriff to a surgeon, for dissection. § 20. After sentence pronounced as aforesaid, the judge may, if he see probable cause, order a respite. § 22. And after conviction and judgment, the prisoner shall be confined in a separate cell, fed with bread and water, (except in case of sickness) and no one allowed access, but by order of the judge, sheriff, or under sheriff, except in cases of respite, when such regulations shall be relaxed by the judge. The gaoler offending herein, shall forfeit his office, and be imprisoned, not exceeding three months. § 23. 24.

EXTORTION.

EXTORTION is an abuse of public justice, consisting in the unlawful taking by an officer, by *colour of his office*, of any money or thing of value, where either none at all is due to him, or not so much is due, or before any is due. Co. *Lit.* 368. 10 *Rep.* 102.

This offence, it has been justly observed, may be, in some cases, considered more odious than roberry; because it carries with it an appearance of truth, and is often accompanied with perjury, by the breach of an oath of office. The punishment for this offence at common law is by fine and imprisonment, and also by a removal from the office, in the execution of which it was committed. And there is a further additional punishment by the statute of Westminster 1. (3 *Ed.* 1. *c.* 26.) by which any sheriff, or other king's officer, who shall take any reward to do his office, shall yield twice as much, and shall be punished at the king's pleasure; under which statute an action lies also to recover this double value. 3 *Com. Dig.* 323. But justices of the peace, whose office was instituted after the act, are bound by their oath of office to take nothing for the execution of their office but of the king, and fees accustomed, and costs limited by statute. And generally no public officer can take any other fees or rewards than those given him by statute, or such as have been anciently and accustomably taken, without being guilty of extortion. *Dalt. c.* 41.

It is extortion in a gaoler to obtain money from his prisoner, by colour of his office. *R. v. Broughton, Trem. P. C.* 111. in a *coroner* to refuse taking an inquest till his fees are paid, 3 *Inst.* 149.; or in an *under sheriff* to obtain his fees by refusing to execute process till they are paid, or to take a bond for his fee, before execution is sued out. 1 *Salk.* 330. It is also extortion in a *miller* or *ferryman* to take more toll than is due by custom. *R. v. Burdett*, 1 *Ld. Ray*, 149. It is also an indictable offence to persuade another to extort money from a person, whereby money was actually extorted from him. *R. v. Tracy*, 3 *Salk.* 192.

Indictment against a Constable for Extortion.

Home District, } The jurors for our lord the King upon their oath
to wit. } present, that J. S. late of the township of —— in the county of —— in the home district, yeoman, on the —— day of —— in the —— year of the reign of our sovereign lord William the fourth, then being one of the constables of the said township, at the township aforesaid, in the county aforesaid, did take and arrest one J. N. by colour of a certain warrant, commonly called a bench warrant, which he the said J. S. then and there alleged to be in his possession, and that he the said J. S. afterwards, and whilst the said J. N. so remained in his custody as aforesaid, to wit, on the day and year aforesaid, at the township aforesaid, in the county and district aforesaid, unlawfully, corruptly, deceitfully, extorsively, and by colour of his said office, did extort, receive and take, of and from the said J. N. the sum of

—— as and for a fee due to him the said J. S. as such constable as aforesaid, for the obtaining and discharging of the said warrant, as he the said J. S. then and there alleged. Whereas, in truth and in fact, no fee whatever was then due from the said J. N. to the said J. S. as such constable as aforesaid, in that behalf; in contempt of our said lord the King, and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our lord the King, his crown and dignity.

FAIRS AND MARKETS.

By Stat. 2 *Edw.* 3. *c.* 15. It shall be commanded to all sheriffs, where need shall require, to publish within liberties and without, that all lords which have fairs shall hold the same for the time that they ought, and no longer. And that every lord at the beginning of his fair shall publish how long the fair shall endure, that merchants shall not be at the same fairs over the time so published, upon pain to be grievously punished towards the king; nor the lords shall not hold them over the due time, upon pain to seize the fairs into the king's hands till they have made fine; after it be found that the lords held the fairs longer than they ought, or that the merchants have sitten above the time published.

By Stat. 5. *Edw.* 3. *c.* 5. The merchants after the time published shall close their booths and stalls, without putting any merchandize to sell there; and if it be found that any merchant sell merchandize at the said fairs after the time, such merchant shall forfeit to the king the double value of that which is sold; and every man that will sue for the king shall be received, and have the fourth part of that which is lost at his suit.

By Stat. 27. *Hen.* 6. *c.* 5. All fairs and markets on the principal feasts and *Sundays*, and *Good Friday*, shall cease from shewing of goods (necessary victuals except) upon pain of forfeiture of the goods to the lords of the franchise, the four *Sundays* in harvest only except.

Provided that this ordinance shall endure to the next parliament, and so forth, except in the said parliament a reasonable cause be shewed, for the which it shall seem not expedient that the aforesaid ordinance shall endure. § 2.

By Stat. 17. *Edw.* 4. *c.* 2.—made perpetual by 1. *Ric.* 3. *c.* 6. No steward, bailiff, nor other minister of courts of pie-powder, shall hold plea upon any action, unless the plaintiff or his attorney, in the presence of the defendant, swear that the contract or other feat contained in the declaration was made or committed within the fair, and within the time of the fair, and within the jurisdiction of the same; and the defendant shall not be concluded, but shall plead

to the action, or in abatement, that the contract, trespass or other feat contained in such declaration, was not committed nor done within the time of the fair and jurisdiction of the same, but out of the time of the fair, or at other places. And if it be so tried, or the plaintiffs or their attornies refuse to make the oaths aforesaid, the defendants shall be dismissed, the plaintiff to take his advantage at common law. And every steward, or other minister holding any of the said courts, that doth the contrary, shall forfeit 100*s.* the one half to the king, and the other half to him that will pursue his action upon this statute in his own name.

Form of a petition for a charter to hold a fair.

To His Excellency Sir John Colborne, K. C. B. *Lieutenant Governor of the Province of Upper Canada, and Major General commanding His Majesty's Forces therein, &c. &c.*

The petition of the undersigned inhabitants and freeholders of the district of ——

Humbly Sheweth,

That from the increase in population, and in the cultivation and improvement of lands in this district, your petitioners conceive that the establishment of a public fair for the sale of goods, wares and merchandize, live stock and agricultural produce, would be productive of great advantage to the inhabitants of this district; and from its central situation, your petitioners humbly submit, that the village of —— in the township of —— in the said district, would be the most desirable place for its establishment. Your petitioners therefore, most humbly pray, that your Excellency will be pleased, in his Majesty's name, to bestow upon the inhabitants of the said district, a charter for holding two fairs in each year, for the sale of such goods, wares and merchandizes, live stock and agricultural produce, as aforesaid, at the said village of —— on the first Wednesday in the months of —— and —— and to continue until the Saturday following, inclusive, under and subject to the payment and observance of such rates, tolls and regulations, as his Majesty's justices of the peace, in general quarter sessions assembled, shall from time to time think proper to impose, make and require; and your petitioners as in duty bound will ever pray, &c.

False Pretences.—*See* "*Cheats.*"

FELONY.

Felony, in its general sense, comprises every species of crime which occasioned, at common law, the forfeiture of lands or goods. 4 *Bl. Com. p.* 94.; and by the common law is against the life

of a man—as murder, manslaughter, felo de se, &c.; against a man's goods—as larceny and robbery; against his habitation—as burglary—arson; and against public justice—as breach of prison. 3 *Inst.* 31; and by statute—as forgery, &c.

Before the reign of *H.* 1. felonies were punished with pecuniary fines: for he was the first who, about the year 1108, ordered felons to be hanged. Since his reign, the judgment for felony continued the same by the common law, unless the offender was allowed to pray the benefit of clergy. 4 *Inst.* 124. But this custom has been recently abolished by statute 3 *W.* 4. *c.* 4.—by which statute, the particular crimes which, for their enormity, ought to be punished with death, are expressly mentioned; and all other felonies shall be punished by banishment, or transportation, or by imprisonment with hard labour.—*See further on this subject, title* "PUNISHMENT."

In all felonies, the offender forfeits to the King all his goods and chattels, absolutely, and the profits of all his freehold estates, for life, and for a year and a day after his death. 1 *Inst.* 391.

FENCE VIEWERS.

By statute 33 *G.* 3. *c.* 2. § 5. not less than two, nor more than six—(and by the 11 *G.* 4. *c.* 7. not more than thirty) persons shall be chosen at the annual town meeting, to serve the office of overseer of the highways, and *fence viewers;* and are required, upon receiving proper notice, to view and determine upon the height and sufficiency of fences, conformable to any resolutions to be agreed upon at such town meetings.

FERRIES.

By Statute 37 *G.* 3. *c.* 10. Justices in sessions are empowered to make such rules and regulations as shall appear necessary, at ferries, and to establish rates and fees to be taken thereat, a list or table of which rules and regulations, rates and fees, shall be set up in some conspicuous place at such ferries, and any person having charge of a ferry, convicted before any one justice, of demanding or receiving any higher or greater rate or fee, or of any breach of the rules or regulations, shall forfeit 20*s.* to be recovered before any one justice, and levied by distress and sale, one-half to the informer, and the other to the district.

See general form of "*Conviction*," &c.

FINES.

By Statute 11 *G.* 4. *c.* 1. it is enacted, that in all cases in which, by the criminal law of England, the whole or any part of any fine

or penalty imposed, for the punishment of any offence, is in any manner appropriated for the support of the poor, or to any parochial or other purpose, inapplicable to the existing state of the province, such fine or penalty, or such part thereof, as shall be so appropriated, shall be paid, when received, to the treasurer of the district, for the use of the district, and to be accounted for in the same manner as assessments.

FIRE.

By Statute 32 *G.* 3. *c.* 5. justices in quarter sessions are empowered to make such orders and regulations for the prevention of accidental fires, as to them shall seem meet and necessary, and to appoint firemen or other officers, for the purpose of extinguishing the same, and to make such orders and regulations as to them shall seem fit or necessary, in any town or place where there may be forty storehouses, within half a mile square.

By statute 7 *G.* 4. *c.* 8. it is enacted, that so soon as one or more fire companies shall be established in any town where there is a police, it shall be lawful for the justices in sessions, being satisfied with the efficiency of such persons, and accepting their enrollment, to direct the clerk of the peace to grant to each member of such corps or company, a certificate of enrollment, which shall exempt him from militia duty, serving as juryman or constable, and from all other parish or town offices. § 2. Justices in sessions may, upon complaint made of neglect of duty, discharge any individual of such company, and in case of any breach of the regulations of the said company, upon conviction, to strike off his name from the list, and from thence forward such certificate shall have no effect.

FIREWORKS.

By Statute 9 & 10 *W. c.* 7. § 1. making or selling, or throwing fireworks from any house into any public street or road, shall be adjudged a common nuisance; and by § 2. Any person selling fireworks, or implements for making the same, shall, upon conviction before one justice, on oath of two witnesses, forfeit £5. half to the poor, and half to the prosecutor, to be levied by distress; and any person permitting same to be cast or thrown from his house into any public street or road, shall forfeit 20*s.* § 2. And any person who shall cast or fire, or aid in casting or firing any, shall forfeit 20*s.*; and if not immediately paid, shall be committed to the house of correction, to be kept to hard labour, not exceeding one month. § 3.

Information for selling Fireworks. (TOONE.)

Home District, } Be it remembered, that on the —— day of ——
to wit. } in the year of our Lord 18— at —— in the home district, A. B. of —— &c. gentleman, cometh before me J. C. esq. one of his Majesty's justices of the peace, and giveth me, the said justice to understand and be informed, that C. D. of —— shopkeeper, at his shop in —— on the —— day of —— last, unlawfully, and against the form of the statute in that case made and provided, did utter and sell to one E. F. certain squibs, crackers, rockets and other fireworks, to wit, [*here state the particular fireworks*] whereby the said C. D. by virtue of the said statute, hath for his said offence, forfeited the sum of £5. therefore the said A. B. prayeth the judgment of me, the said justice, in the premises, and that he may have one-half of the said forfeiture.

Exhibited before me.

The like for throwing Fireworks. (TOONE.)

Home District, } That C. D. late of —— in the —— district,
to wit. } labourer, at the town of —— in the said district, in the public street and highway, there did unlawfully throw, cast and fire, certain fireworks, to wit, (squibs, &c.) against the form of the statute in that case made and provided, whereby and by force of the statute, the said C. D. hath for his said offence forfeited the sum of 20*s*. wherefore he prayeth &c. [as before].

[The above informations should not be upon oath, but at the hearing the facts must be proved on oath by two witnesses at least.] *See general form of "Conviction," &c.*

FISHERY.—*(White)*

By Statute 3 *W.* 4. *c.* 30. entitled, 'an act to protect the white fish fisheries, in the straits or rivers Niagara, Detroit, and Saint Clair, in this province,' a penalty of £125. is imposed upon any person using any seine or net for the taking of white fish, in any of the above waters, of a greater length than 50 fathoms. § 2. Also a penalty of £50. on persons fishing on Sunday. § 3. And a penalty of £125. for attempting to divert the natural progress or running of the white fish, by shingling or other device; or imprisonment, not exceeding three months. § 4. Fishing in front of lands of another individual, (except in the channel) subject to a penalty of £50. § 6. The above penalties to be recovered by action of debt, with costs of suit, before any court of competent jurisdiction; one moiety to the informer, and the other to the province.

FLOUR.

By Statute 41 *G.* 3. *c.* 7. it shall be lawful for the lieutenant governor to appoint one or more inspectors, at such places as he shall deem proper, who shall take the following oath: [*but the act does not say before whom it shall be taken.*]

'I —— do sincerely swear, that I will faithfully and impartially, and according to the best of my skill and understanding, execute the office and duty of an inspector or examiner of flour, or pot and pearl ashes, (as the case may be) according to the true intent and meaning of an act of this province, entitled, "an act to authorise the governor, lieutenant governor, or person administering the government, to appoint inspectors of flour, pot and pearl ashes, within this province." So help me, God.'

Sec. 1. 2. And it shall be lawful for any person having flour, &c., to call upon the inspector to examine the same, who is hereby required to do so, by boring the head of the cask, and piercing through the flour with the usual instrument; and the said inspector shall declare the quality of the same, by marking it as superfine, fine, or middling, and if unsound or soured: and in case of pot and pearl ashes, to unpack the cask and repack the same, and mark the cask as first, second, or third sort, or merely salts, as the case may be. § 3. And for every barrel of flour so examined, the inspector shall have three pence; and for every cask of pot and pearl ashes, one shilling.

By 60 *G.* 3. *c.* 5. every miller shall provide brands or marking irons, for the purpose of branding and marking flour packed in barrels, on which shall be expressed the name of the mill, with the words Upper Canada, the net weight and tare in figures, and also the words superfine, fine, or fine middlings. § 2. That all wheat flour shall, by such miller, be made merchantable and of due fineness, and shall be honestly and well packed, in good and sufficient casks, made of staves well seasoned, and bound with ten hoops, and the tare marked on the said cask, with the nett flour, each cask to contain 196 lbs. § 3. That on any miller being required to make flour intended to be of the first quality, on each cask shall be branded, superfine; second quality, the word fine; third quality, the words fine middlings; under the penalty of 10*s.* for every cask. § 4. All flour for sale, packed and branded as aforesaid, shall, at the option of the purchaser, be inspected, and the expense paid equally. § 5. Putting a false or wrong tare on any cask of flour, subject to 10*s.* penalty. § 6. Counterfeiting brand marks, or putting into an empty branded cask, flour of another quality, subject to a penalty of 20*s.* for every offence. § 7. Inspectors shall weigh

any suspected cask of flour, and if not weight, brand on the head the word light, and for every cask so branded, the manufacturer shall pay 10*s*. § 8. Inspector to brand the initials of his name on all casks of flour inspected by him. § 9. And the real quality of the flour, if not before rightly branded. § 10. Inspectors not to deal in flour under penalty of forfeiting their commission. § 11. Fines recoverable with costs, before any one justice, who shall summon the offender, and upon his appearance or default, proceed to judgment; one moiety of such fines to the use of the province, and the other to the informer.

N. B. But the act does not point out the mode in which the fines shall be levied, and it is therefore doubtful whether the magistrate would be justified in issuing a warrant of distress, if the fines should not be paid.

FORCIBLE ENTRY AND DETAINER.

What is a Forcible Entry.

A FORCIBLE ENTRY is committed by violently taking possession of lands and tenements, with menaces force and arms, and without the authority of the law. 4 *Bl. Com.* 148. And even if a man have a good right to the land, and enter forcibly, he may be indicted. *Dalt, (Ed.* 1727*) c.* 129. A single person may commit a forcible entry as well as a number of persons. 1 *Haw. c.* 64. § 8. 22. 29. A forcible entry is made with a strong hand, with unusual weapons; an unusual number of servants or attendants; or with menace of life or limb: or, by breaking open the doors of a house, whether any person be in it at the time or not; and though a man enter peaceably, yet if he turn the party out of possession by threats, or violence—this also amounts to a forcible entry. 1 *Haw. c.* 64. § 25. But merely drawing a latch, and entering a house; or opening the window or door with a key; or entering by an open window—do not constitute a forcible entry. *Ibid.*

What is a Forcible Detainer.

A forcible detainer, is where a person who enters peaceably, though unlawfully, detains possession by force; and the same circumstances of violence or terror which makes an entry forcible, will also constitute a forcible detainer. Therefore, whoever, after an unlawfully entry, keeps in the house an unusual number of persons, or weapons, or threatens to do some bodily hurt to the former possessor, is guilty of a forcible detainer. So, if a man shuts the door against a justice of the peace, coming to view the

force, and obstinately refuses to let him come in; so, a lessee, who, after the end of his term, keeps arms in his house to oppose the entry of the lessor, is guilty of a forcible detainer; and the same with regard to a lessee at will, after the will is determined; or of a mortgagor, after the mortgage is forfeited. 1 *Haw. c.* 64. § 30. 4 *Com. Dig.* 201. But the mere refusal to go out of a house, and continuing therein in despite of another, does not amount to a forcible detainer. 1 *Haw. c.* 64. § 30. Therefore, if a lessee at will, (after the determination of his tenancy) merely denies possession to the lessor, or even shuts the door against the lessor when he would enter—this is not a forcible detainer. *Cro. Car.* 486. And a man who breaks open the doors of his own dwelling-house, forcibly detained by one who has the bare custody of it, is not guilty of a forcible entry or detainer. 1 *Haw. c.* 64. § 32.

Of the Remedy.

At common law, a man disseised of any lands or tenements, if he could not prevail by fair means, might lawfully regain the possession thereof by force. 1 *Haw.* 140. But this indulgence of the common law having been found, by experience, to be very prejudicial to the public peace, it was thought necessary, by many severe laws, to restrain all persons from the use of such violent methods of doing themselves justice. *Ib.* 141. Accordingly, by 5 *Ric.* 2. statute 1. *c.* 8. None shall make entry into lands but where entry is given by law, and in such case not with strong hand, nor with multitude of people, but only in lawful and easy manner. And if any do the contrary, and thereof be convicted, he shall be punished by imprisonment and ransomed at the king's will.

By 15 *Ric.* 2. *c.* 2. At all times that forcible entries be made, and complaint thereof cometh to justices of peace, or any of them, the same justices or justice shall take sufficient power of the county, and go to the place where such force is made; and if they find any that hold such place forcibly, they shall be taken and put in the next gaol, there to abide convict by the record of the justices or justice, till they have made fine and ransom to the king. And all they of the county, as well the sheriff as others, shall attend upon the justices, to assist them to arrest such offenders, upon pain of imprisonment, and to make fine to the king.

By 8 *H.* 6. *c.* 9. Where any doth make forcible entry into lands, tenements, or other possessions, or them hold forcibly, after complaint made to the justices of peace, or one of them, by the party grieved, the justices or justice, within a convenable time, shall cause the statute duly to be executed at the costs of the parties grieved. § 2.

Though such persons making such entries be present, or voided before the coming of the justices; nevertheless, the justices, in some town next the tenement, or in other convenient place, shall have power to enquire by the people of the county, as well of them that make such forcible entries into lands and tenements, as of them which the same hold with force. And if it be found before them, that any doth contrary to this statute, the justices shall cause the tenements so entered or holden to be re-seised, and put the party so put out in full possession. § 3.

When the justices make such inquiries, they shall cause their precepts to be directed to the sheriff, commanding him to cause to come before them sufficient and indifferent persons dwelling next about the lands so entered, to inquire of such entries, whereof every man impannelled shall have lands of the yearly value of 40s. And the sheriffs shall return issues upon them at the day of the first precept returnable 20s.; and at the second day 40s.; at the third time 100s.; and every day after, the double. And if any sheriff or bailiff make not execution duly of the said precepts, he shall forfeit to the King £20. and moreover make fine and ransom. § 4.

By 31 *Eliz. c.* 11. No restitution upon any indictment of forcible entry, or holding with force, shall be made, if the persons indicted had the occupation, or been in quiet possession, three years next before the day of such indictment found, and their estate therein not ended, which the party indicted may allege for stay of restitution; and if the other traverse the same, and the allegation be found against the party indicted, he shall pay costs. § 3.

By 21 *Jac.* 1. *c.* 15. a justice of the peace may also give like restitution of possession to tenants, for term of years. If the offenders, being in the house, make no resistance, then the justice can neither arrest or remove them on his view, and the party cannot be arrested unless the *force* be found by the inquiry of a jury, and if such forcible entry and detainer be found, then the justice shall cause the lands to be restored. *Dalt.* 1. 44. Although one justice alone may proceed in such cases, yet it may be advisable for him, if the time for viewing the force will suffer it, to take to his assistance one or two more justices. *Burn's, J.* 179.

A conviction by a justice for a forcible entry, on view, must set a fine upon the defendant, otherwise the court of king's bench will discharge him from a commitment on such conviction, by *habeas corpus*. *R. v. Elwell, Str.* 794. *Ld. R.* 1514. If a fine be set, the conviction cannot be quashed on motion, but the defendant must bring his writ of error; but if no fine be set, it may then be quashed on motion. *R. v. Layton*, 2 *Salk.* 450.

Restitution.

Must be awarded by the same justices before whom the inquest was found. If a restitution shall appear to have been illegally awarded or executed, the court of king's bench will set it aside, and grant a re-restitution to the defendant. 1 *Haw. c.* 64. § 63, 64, 65.

The sheriff in executing the writ of restitution may raise the power of the county to assist, but the justices may, if they think proper, make restitution in person. A justice, or the sheriff may break open a house to make restitution; and if the possession be avoided by a fresh force, the party may have a second writ of restitution without a new requisition, if applied for within a reasonable time. 1 *Haw. c.* 64. § 49, 52. 4 *Com. Dig.* 204.

How punishable by Indictment.

A forcible entry or detainer, is also at common law, punishable by indictment; and if three or more be concerned, it is also a riot, and may be proceeded against accordingly. *Dalt. c.* 44.

Record of a Forcible Detainer upon view, before three Justices.
(Burn.)
[Or it may be before one Justice only.]

Home District, } Be it remembered, that on the —— day of ——
to wit. } in the —— year of the reign of our sovereign lord —— at —— in the district aforesaid, —— complained to us —— and —— esquires, three of the justices of our said lord the king, assigned to keep the peace in the said district, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said district committed, that —— and —— late of —— in the said district, yeomen, into the messuage of her the said —— situate within the township of —— in the district aforesaid, did enter, and her the said —— of the messuage aforesaid, whereof the said —— at the time of the entry aforesaid, was seised, as of the freehold of her the said —— for the term of her life, unlawfully ejected, expelled and removed, and the said messuage from her the said —— unlawfully, with strong hand and armed power, do yet hold and from her detain, against the form of the statute in such case made and provided; whereupon the said —— then to wit, on the said —— day of —— in the year aforesaid, at the city of Toronto, in the district aforesaid, prayeth of us so as aforesaid, being justices, to her in this behalf, that a due remedy be provided, according to the form of the statute aforesaid; which complaint and prayer by us the aforesaid justices being heard, we

the aforesaid —— justices, aforesaid, to the messuages aforesaid, personally have come, and do then and there find and see the aforesaid —— the aforesaid messuage, with force and arms unlawfully, with strong hand and armed power detaining, against the form of the statute in such case made and provided, according as she the said —— hath so as aforesaid unto us complained; therefore it is considered by us, the aforesaid justices, that the aforesaid —— of the detaining aforesaid, with strong hand, by our own proper view, then and there as is aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid, whereupon we, the justices aforesaid, upon every of the aforesaid —— do set and impose severally, a fine of —— of good and lawful money of this province, to be paid by them and every of them, severally, to our said sovereign lord the king, for the said offences, and do cause them and every of them then and there to be arrested, and the said —— and —— being convicted, and every of them being convicted, upon our own proper view of the detaining aforesaid with strong hand, as is aforesaid by us, the aforesaid justices are committed, and every of them is committed to the common gaol of our said lord the king, at Toronto aforesaid, in the district aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively, until they shall have paid their several fines respectively, to our said lord the king, for their respective offences aforesaid, concerning which, the premises aforesaid, we do make this our record. In witness whereof, we the said —— the justices aforesaid, to this record our hands and seals do set, at—— aforesaid, in the district aforesaid, on the—— day of —— in the —— year of the reign of our said sovereign lord the king.

Mittimus for a Forcible Detainer, upon view, by one Justice. (Burn.)

J. C. esq. one of the justices of our sovereign lord the King, assigned to keep the peace of our said sovereign lord the King, in and for the home district, and also to hear and determine divers felonies, trespasses and other misdemeanors, in the said district committed; to the keeper of his Majesty's gaol at Toronto, in the said district, and to his deputy there, or to either of them,—*greeting.*

Home District, } Whereas upon complaint this day made unto me
to wit. } J. C. esq. one of his Majesty's justices of the peace for the —— district, by A. B. of —— in the said district, yeoman; I, the said justice, did immediately go to the dwelling-house of the said A. B. at —— aforesaid, and there found upon mine own view, C. D. late of —— labourer, E. F. late of the

same place, labourer, and G. H. late of ——— carpenter, forcibly with strong hand and armed power holding the said house, against the peace of our said lord the King, and against the form of the statute in such case made and provided; therefore I send you, by the bringers hereof, the bodies of the said C. D. E. F. and G. H. convicted of the said forcibly holding, by mine own view, testimony and record; commanding you, in his Majesty's name, to receive them into your said gaol, and there safely to keep them and every of them, respectively, until they shall have respectively paid the several sums of £10. of good and lawful money of Great Britain, to our said sovereign lord the King, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses, respectively. Herein fail you not, on the pain that will ensue thereon. Given at ——— aforesaid, in the home district aforesaid, under my hand and seal, the ——— day of ——— in the ——— year of the reign of our said sovereign lord the King, and in the year of our Lord 183—. J. C.

Justice's precept to Summon a Jury. (Burn.)

Home District } J. C. esquire, one of the justices of our lord the
to wit. } King assigned to keep the peace in the said district, and also to hear and determine divers felonies, trespasses and other misdemeanors, in the said district committed: To the sheriff of the said district—greeting: On behalf of our said lord the king I command you that you cause to come before me, at ——— in the said district, on the ——— day of ——— next ensuing, twenty-four sufficient and indifferent men of the neighbourhood of ——— aforesaid, in the district aforesaid, every one of whom shall have lands and tenements of 40s. yearly, at the least above reprizes, to inquire upon their oath for our said lord the King of a certain entry made with a strong hand, as it is said, into one messuage of one A. B. at ——— aforesaid, in the district aforesaid, against the form of the statute in that case made and provided; and you are to return upon every of the jurors by you in this behalf to be empannelled 20s. of issues at the aforesaid day, and have you then there this precept, and this you shall in no wise omit upon the peril that thereon shall ensue. Witness the said J. C. at ——— in the said district, the ——— day of ——— in the ——— year of the reign of our sovereign lord William the fourth.

Jurors Oath.

You shall true inquiry and presentment make of all such things as shall come before you concerning a forcible entry [or detainer] said to have been lately committed in the dwelling house of A. B.

at ——; you shall spare no one for favor or affection, nor grieve any one for hatred or ill will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you. So help you God.

To the other Jurors.

The oath that A. B. your foreman hath taken on his part, you and every of you shall truly observe and keep on your parts. So help you God.

The Inquisition or finding of the Jury. (Burn.)

Home District, } An inquisition for our sovereign lord the King,
to wit. } indented and taken at —— in the home district, the —— day of —— in the —— year of the reign of our sovereign lord King William the fourth, by the oath of —— good and lawful men of the said district, before J. C. esq. one of the justices of our said lord the King, assigned to keep the peace for the said district, and also to hear and determine divers felonies, trespasses and other misdeeds, in the said district committed, who say upon their oath, aforesaid, that A. B. of —— long since lawfully and peaceably was seised in his demesne as of fee [*if not freehold, say 'possessed'*] of, and in one messuage with the appurtenances in —— aforesaid, in the district aforesaid, and his said possession *(or seisin)* so continued, until C. D. late of —— &c. E. F. of &c. and G. H. of &c. and other malefactors unknown, the —— day of —— now last past, with strong hand and armed power, into the messuage aforesaid with the appurtenances aforesaid, did enter, and him the said A. B. thereof disseised, and with strong hand expelled, and him the said A. B. so disseised and expelled from the said messuage, with the appurtenances aforesaid, from the —— day of —— until the day of the taking this inquisition, with like strong hand and armed power did keep out, and do yet keep out, to the great disturbance of the peace of our said lord the King, and against the form of the statute in that case made and provided. We whose names are hereunto set, being the jurors aforesaid, do upon the evidence now produced before us, find the inquisition aforesaid true. A. B. &c.

Warrant to the Sheriff for Restitution. (Burn.)

Home District, } J. C. esq. one of the justices of our sovereign
to wit. } lord the King, assigned to keep the peace in the home district, and also to hear and determine divers felonies, trespasses and other misdemeanors, in the said district committed: to the sheriff of the said home district—*greeting.*

Whereas by an inquisition taken before me, the justice aforesaid, at —— in the district aforesaid, on this present —— day of —— in the —— year of the reign of —— upon the oaths of —— and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found that C. D. &c. into a certain messuage &c. [*as in the inquisition*] as by the inquisition aforesaid more fully appeareth of record: therefore on the behalf of our said sovereign lord the King, I charge and command you, that taking with you the power of the district, (if it be needful) you go to the said messuage, and other the premises, and the same with the appurtenances you cause to be re-seised, and that you cause the said A. B. to be restored and put into his full possession thereof, according as he before the entry aforesaid was seised, according to the form of the said statutes; and this you shall in no wise omit, on the penalty thereon incumbent. Given under my hand and seal, at —— in the said district, the —— day of —— in the —— year of the reign of ——

Indictment for a Forcible Entry and Detainer at Common Law.

Home District, } The jurors for our lord the King, upon their oath
to wit. } present, that J. S. late of the township of —— in the county of —— in the home district, gentleman, K. T. of the same township, carpenter, and L. W. of the same township, labourer, together with divers other evil disposed persons, to the number of six or more, to the jurors aforesaid unknown, on the —— day of —— in the —— year of the reign of our sovereign lord William the fourth, with force and arms, to wit, with pistols, swords, sticks, staves and other offensive weapons, at the township aforesaid, in the county and district aforesaid, into a certain barn and a certain orchard, there situate and being, and then and there in the possession of one J. N. unlawfully, violently, forcibly, injuriously and with a strong hand did enter, and the said J. S. K. T. and L. W. together with the said other evil disposed persons, to the jurors aforesaid unknown as aforesaid, then and there, with force and arms, to wit, with pistols, swords, sticks, staves and other offensive weapons, unlawfully, violently, forcibly, injuriously and with a strong hand, the said J. N. from the possession of the said barn and orchard did expel, remove and put out, and the said J. N. so as aforesaid expelled, removed and put out, from the possession of the said barn and orchard, then and there, with force and arms, to wit, with pistols, swords, sticks, staves and other offensive weapons, unlawfully, violently, forcibly, injuriously and with a strong hand did keep out, and still do keep out, and other wrongs to the said J. N. then and there did, to the great damage

of the said J. N. and against the peace of our lord the King, his crown and dignity.

FOREIGN SERVICE.

ANY engagement with a foreign state is a contempt against the prerogative, and a high misdemeanor at common law. 4 *Bl. Com.* 122.

FORESTALLING.

AT the common law every practice or device to enhance the price of victuals, or other necessaries of life, is held to be a misdemeanor. 3 *Inst.* 196 : and forestalling, in its legal signification, anciently comprehended all offences of this description, including those of *ingrossing* and *regrating*. Ingrossing is the purchase of the whole of any commodity for the sake of selling it again at a high price. Regrating signifies, properly, the scraping or dressing of cloth, or other goods, in order to sell the same again. The offences of forestalling, ingrossing and regrating, have been also especially provided against by various statutes, from the 3 & 4 *Ed.* 6. *c.* 21. downwards to the 12 *G.* 3. *c.* 71. ; by which latter statute all the preceding statutes were repealed, leaving the offence only to be dealt with as it stood at common law, under which it still continues an indictable offence, punishable by fine and imprisonment. *Cr. C. C.* 232.

FORGERY.

FORGERY is the fraudulent making or alteration of a writing, to the prejudice of another man's right. It is a *misdemeanor* at common law, punishable by fine, imprisonment and pillory. 4 *Bl. Com.* 247 : but is made *felony* by a variety of statutes ; and forgery is complete although no person be actually prejudiced by it.—*Ward's case. Ld. R.* 1461. The following instances come under the denomination of forgery :—making a fraudulent insertion, alteration or erasure, in any material part of a true instrument : converting a bond for £500 into one for £5000, by adding an 0. to the number. 1 *Haw. c.* 70. § 2. Altering a banker's note or bill of exchange, from £10 to £50. *R. v. Teague*, 2 *East. P. C.* 979. Altering the date of a bill, whereby payment is accelerated. 2 *East. P. C.* 853. So, if a man who is ordered to draw a will for a sick person, insert legacies in it of his own head. 3 *Inst.* 170. So, a man may be guilty of forgery in signing any

instrument in his own name, if he represent himself to be some *other person* of the same name. *Mead v. Young*, 4 *T. R.* 28.

As to Forgery by Statute Law.

By 5 *Eliz. c.* 14, § 2. forging any false deed, charter, or writing sealed; court roll; or the will of any person; or publishing any such as true, shall subject the party to double costs and damages; be set in the pillory, &c.; and by stat. 2 *G.* 2. *c.* 25. revived and made perpetual by 9 *G.* 2. *c.* 18.—any person forging any deed; will; bond; writing obligatory; bill of exchange; promissory note; indorsement or assignment thereof; or uttering same as true, shall be guilty of felony. By 24 *G.* 3. *st.* 2. *c.* 37. forging the superscription of a letter, to avoid the payment of postage, is made felony.

By 35 *G.* 3. *c.* 5. § 14. any person forging any memorial, &c. under the registry act, shall be subject to the pains and penalties of the 5 *Eliz.* By 50 *G.* 3 *c.* 4. forging any foreign bill of exchange; promissory note; undertaking or order for payment of money; or uttering the same as true, is punishable by fine, or imprisonment, not exceeding two years; or other corporal punishment, not extending to life or member; and also by banishment; or by one or more of said punishments, at the discretion of the court. § 1. And any person engraving, cutting, etching, &c. upon any plate, any foreign bill of exchange, promissory note, undertaking or order, or any part thereof, without authority; or printing any such foreign bill of exchange, &c.; or having any such plate or device in his possession, without lawful excuse; or any impression taken from the same, shall be guilty of a misdemeanor; and for the first offence, be imprisoned for any time not exceeding six months; or fined; or publicly or privately whipped; or suffer any one or more of these punishments; and for the second offence, be punished by fine, or imprisonment, not exceeding two years. § 5. And it shall be lawful for any one justice, on complaint upon oath that there is just cause to suspect that any person or persons have been concerned in the forging or engraving of such foreign bills, &c.; or have in his, her, or their custody, any such plate or device, or any impression taken therefrom, by warrant, to cause the premises of such suspected person to be searched, and to seize any tools, plates, implements or devices, found thereon; and the person seizing shall carry the same forthwith to a justice, who shall cause the same to be secured, and produced in evidence against the party. § 6. Actions must be brought within three months.

FRUIT TREES.

By 37 *H.* 8. *c.* 6. § 4. if any person shall maliciously bark any apple trees, pear trees, or other fruit trees, he shall forfeit to the party grieved treble damages, by action of trespass, and also £10 to the King; and by 43 *Eliz. c.* 7. § 1. every person who shall rob any orchards or gardens, or break or cut any hedge, pales, rails or fence, or dig or pull up any fruit tree or trees, in any orchard, garden or elsewhere, to the intent to take and carry away the same, every such person, his procurers and receivers, knowing the same, being thereof convicted, by confession, or oath of one witness, before one justice, shall pay such damages as such justice shall appoint, for the first offence; and in default shall be committed to the constable where the offence shall be committed, to be whipped; and for every such offence for which the offender shall be eftsoons (afterwards) convicted, in form afore limited, the person so offending shall receive the said punishment of whipping. § 2. And if the constable shall not by himself or some other, execute upon the offender the said punishment, the justice may commit him to the common gaol till he comply. § 2.

FUGITIVE FELONS.

By Statute 37 *G.* 3. *c.* 15. if any person against whom a warrant shall be issued by the chief justice, or any other magistrate in any of his Majesty's provinces in North America, for any felony or crime of a higher nature, shall escape, and come into any part of this province, any justice of the peace where such felon shall be, may (upon due proof of the hand-writing of the magistrate issuing the warrant) endorse the same, which shall be a sufficient authority for the execution thereof, where such warrant shall be so endorsed. § 2. The person having such warrant, first entering into recognizance with sufficient sureties, in not less than £50. to indemnify the province against any expenses arising from the apprehension of such offender, and the magistrate to whom such application is made, may take such recognizance.

By statute 3 *W.* 4. *c.* 7. entitled, 'an act to provide for the apprehending of fugitive offenders from foreign countries, and delivering them up to justice,' it is enacted, that the governor shall have power, and he is hereby authorised at his discretion, and by and with the advice of the executive council, on requisition being made by the government of any country, or its ministers or officers authorised to make the same, within the jurisdiction of which country the crimes hereinafter mentioned shall be charged to have

been committed, to deliver up to justice any person who may have fled to this province, or who shall seek refuge therein, being charged with murder, forgery, larceny, or other crime, committed without the jurisdiction of this province, which crimes, if committed within this province, would, by the laws thereof, be punishable by death, corporal punishment, by pillory or whipping, or by confinement at hard labour, to the end that such person may be transported out of this province, to the place where such crime shall have been charged to have been committed; provided always, that this shall only be done upon such evidence of criminality as according to the laws of this province, would, in the opinion of the governor *and* of the executive council, warrant the apprehension and commitment for trial of such fugitive from justice, or person so charged, if the offence had been committed within this province. § 2. And for preventing the escape of any person so charged, before any order for his apprehension can be obtained from the governor, it shall be lawful for any judge, or for any justice of the peace, within his jurisdiction, to issue his warrant for the apprehension, and for the commitment of the accused, until application can be made to the governor, and an order made thereupon; which warrant shall, nevertheless, only be granted upon such evidence, on oath, as shall satisfy such judge or justice, that the person accused stands charged with some crime of the description hereinbefore specified, or that there is good ground to suspect him to have been guilty thereof.

Warrant to apprehend a Fugitive Felon.

To the Constable of —— in the Home District.

Home District, } Whereas A. B. of —— in the state of New
to wit. } York, constable, hath this day made information and complaint upon oath, before me J. C. esq. one of his Majesty's justices of the peace for the said district, that C. D. late of Buffalo, in the said state of New York, labourer, now stands charged upon oath, in the said state of New York, to wit, at Buffalo, with having feloniously stolen, taken and carried away, at Buffalo aforesaid, fifty dollars in bank notes, of the bank of the United States, the property of one E. F. and that a warrant hath been issued at Buffalo aforesaid, for the arrest of the said C. D. for the felony aforesaid, but that the said C. D. hath on account of the said felony, fled to and come into this province, and is now residing at —— in the said home district. These are therefore to command you, in his Majesty's name, forthwith to apprehend and bring before me, or some other justice of the peace for the said district, the body of the said C. D. to be dealt with according to law. Herein fail you not. Given under my hand and seal &c.

Mittimus of a Fugitive Felon.

J. C. esq. one of his Majesty's justices of the peace in and for the home district, to the Constable of —— and to the Keeper of his Majesty's gaol at Toronto.

Home District, } These are to command you the said constable,
to wit. } in his Majesty's name, forthwith to convey and deliver into the custody of the keeper of the said gaol, the body of C. D. late of —— who is charged on the oath of A. B. &c. [*here state the particulars*] and you the said keeper are hereby required to receive the said C. D. into your custody, in the said gaol, and him safely keep, to be dealt with, and until he shall be delivered from your custody according to law. Given under my hand and seal, &c.

GAMING.

By stat. 33 *Hen.* 8. *c.* 9. No person shall keep any common house, alley, or place of bowling, coyting, closh cayls, half-bowl, tennis, dicing table, carding, or any unlawful game, then, or thereafter to be invented, on pain of 40*s.* a day. § 11 : and persons frequenting such house shall forfeit 6*s.* 8*d.* each time. § 12.

Justices may enter suspected houses, and arrest and imprison the keepers and persons resorting thereto, until the keeper give security no longer to keep the said house. § 14. 15. No apprentice, journeyman artificer, servingman, &c. shall play at unlawful games, except at Christmas, and at their masters houses &c. or in his presence, under penalty of 6*s.* 8*d.* each time. §16.

By 2 *G.* 2. *c.* 28. If proved on the oath of two witnesses before any justice, or upon his own view, that any person hath used any unlawful game, contrary to 33 *H.* 8. *c.* 9. such justice may commit the offender, unless he give security not to play in future. § 9.

By 16 *Car.* 2. *c.* 7. § 2. If any person by any *fraud*, unlawful device, or ill practice, in playing at or with cards, dice tables, tennis, bowls, kittles, shovel-boards, or in or by cock-fighting, horse-races, dog-matches, foot-races, or *other* pastimes, or by betting thereon, shall win any money, &c. the offender shall forfeit treble the value, with treble costs, one moiety to the king and the other to the party grieved, if he shall sue within six months : and by § 3. if any person shall play at any of the said games, or any other pastime or game whatsoever (other than with and for ready money) or shall bet on such as play, and lose above £100 at any one time, upon ticket or credit, or otherwise, the securities shall be void, and the winner shall forfeit treble the value, with treble costs, if sued within a year; one moiety to the king and the other to the informer.

By 9 *Ann*, *c.* 14. any person who shall at any time or sitting, by playing at cards, &c. or by betting, lose and pay £10. the loser may, within three months, recover the same by action; and if he shall not sue within three months, then any other person may recover the same, with treble value and costs; half to the prosecutor and half to the poor. § 2. And if any person shall *fraudulently* win at cards, &c. or acquire by betting, &c. any sum of money or other valuable thing, above £10. and being convicted on indictment and information, he shall forfeit five times the value, to be recovered by the person who shall sue. § 5. Any two justices on just cause of suspicion, may cause any person to be apprehended who has no visible means of living except by gaming, and may require security for his good behaviour for twelve months, or commit him until such security be given. § 6. And any person assaulting or challenging another, for money won by gaming, shall forfeit to the king all his goods and personal estate, and be imprisoned two years.

Upon these statutes it has been held, that a wager above £10. on a horse race is illegal. 2 *Str.* 1159. 2 *Wils.* 309.: and a wager to any amount, on a horse race, where the race is for less than £50. cannot be recovered; for all such races are illegal by the 13 *G.* 3. *c.* 19. § 2.; and if two persons play at cards from Monday evening to Tuesday evening, without any interruption, except for an hour or two at dinner, and one of them win a balance of 17 guineas, this is won at one sitting, within the 9 *Ann*, *c.* 14. 2. *Bl. Rep.* 1226. A foot race is also an illegal game. 2 *Wils.* 36.—and so is cricket, so far as to invalidate a bet of more than £10. upon the players. 1 *Wils.* 220.

By 10 & 11 *W.* 3. *c.* 17. § 1. all lotteries are declared to be public nuisances; and by § 2. No person shall expose to be played, drawn or thrown at, either publicly or privately, or shall draw &c. at any lottery, either by dice, lots, cards, balls, numbers or figures, or any other way, under the penalty of £500.; one-third to the king, one-third to the poor, and one-third with double costs to the informer; and the offenders may also be prosecuted as common rogues: and every person who shall play, throw or draw, at any such lottery, shall forfeit £200. to be recovered in like manner.

By 10 *Ann c.* 26. § 109. insurances on marriages, births, christenings or service, are prohibited under the penalty of £500.

By 8 *G.* 1. *c.* 2. § 36. every person who shall keep any office for the sale of houses, lands, &c. by lottery, for the improvement of small sums of money, shall forfeit £500.; and every person who shall be an adventurer therein shall forfeit double the sum paid. § 37.

By 9 *G.* 1. *c.* 19. § 4. foreign lotteries are prohibited under the penalty of £200. By 6 *G.* 2. *c.* 35. § 29. if any person shall sell or deliver any ticket belonging to such foreign lottery, he shall forfeit £200.

By 12 *G.* 2. *c.* 28. § 1. if any person shall keep any office for the sale of houses, lands, goods, or other things, by lottery, numbers, figures, cards or dice, he shall forfeit £200. on conviction by one justice, on the oath of one witness, or on view of such justice, to be levied by distress and sale; one-third to the informer, and two-thirds to the poor. The games of ace of hearts, pharaoh, basset and hazard, are declared games and lotteries prohibited by this statute. § 2. Adventurers in such games, shall forfeit £50 to be sued for and recovered as aforesaid. § 3.

By 13 *G.* 2. *c.* 19. the game of passage, and all games with dice (backgammon excepted) are declared illegal, and within the 12 *G.* 2. *c.* 28.

By 18 *G.* 2. *c.* 34. § 1. no person shall keep any house, &c. for the game of roulet, otherwise *roly poly*, or any other game with cards or dice, prohibited by law, under the penalties of 12 *G.* 2. *c.* 28. By § 4. witnesses may be summoned under this act, or under the 12 *G.* 2. *c.* 28. to give evidence, under the penalty of £50. or imprisonment for six months, in case of default.

Warrant to apprehend a Gambler, under 9 *Ann*, *c.* 14. (Toone.)

To the constable of ——

Home District, } Whereas complaint hath been duly made before
to wit. } us, J. C. and S. P. esquires, two of his Majesty's justices of the peace for the said district, that A. B. late of —— in the said district, doth frequently use to play at —— in the said district, and that he hath no visible estate, nor follows any employment to maintain himself, but lives chiefly by gaming and sharping upon other people: These are, therefore, in his Majesty's name, to require and authorise you to apprehend the said A. B. and bring him before us, or some other of his Majesty's justices of the peace for this district, to answer what shall be objected against him in that behalf, and to be dealt with according to law. Given under our hands and seals, &c.

Commitment for want of Sureties. (Toone.)

To the constable of —— and to the keeper of his Majesty's gaol in and for the home district.

Home District, } Whereas it hath been duly proved before us, J. C.
to wit. } and S. P. esquires, two of his Majesty's justices

of the peace for the home district, that A. B. of —— on the —— day of —— did play at —— at the house of —— at —— aforesaid, not having any visible estate or employment for his support and maintenance; and he not being able to give sufficient security for his good behaviour for the space of twelve months, as the statute directs: These are therefore, in his Majesty's name, to require and authorise you, the said constable, to convey the said A. B. to the said gaol, and to deliver him to the keeper thereof: and you, the said keeper, are hereby required to receive the said A. B. into your custody, and him safely keep in your said gaol, until he shall give security as aforesaid.

Given under our hands and seals, this —— day of ——.

GAOLS.

The gaol is the king's, but the keeping thereof is incident to the office of sheriff. 2 *Burns. J.* 430.

By statute 32 *G.* 3. *c.* 8. § 1. It is enacted that a gaol and court house shall be erected in every district throughout the province. § 16. Justices in Q. S. may frame such rules and regulations for the gaols as they may think proper, which having been approved and signed by one of the judges shall be binding on the gaoler and prisoners. By the 50 *G.* 3. *c.* 5. until houses of correction shall be erected the common gaols shall be constituted houses of correction.

By 11 *G.* 4. *c.* 3. Justices in sessions, at their first sessions after the passing of this act, shall assign limits to the gaols, not exceeding 16 acres, for the debtors.

By stat. 31 *C.* 2. *c.* 2. if any person shall be committed to any prison, for any criminal or supposed criminal offence, he shall not be removed thence, unless it be by *habeas corpus*, or some other legal writ; or where he is removed from one prison or place to another within the same county, in order to his trial or discharge; or in case of sudden fire, or infection, or other necessity, on pain that the person signing any warrant for such removal, and the person executing the same, shall forfeit for the first offence £100, and for the second £200 to the party grieved. § 9. But on emergent occasions, as in the case of infectious diseases, the sheriff or gaoler, with the advice and consent of three or more justices, may if they shall find it needful, provide other safe places (with the owners consent) for the removal of sick or other persons out of the usual gaols. 19 *C.* 2. *c.* 4. § 2. The gaoler shall not put, keep or lodge, prisoners for debt and felons together in one room or chamber, on pain of forfeiting his office and treble damages to the party grieved. 22 & 23 *C.* 2. *c.* 20. § 13.

By the 3 *H.* 7. *c.* 3. Those that have the custody of gaols must certify the names of all prisoners to the justices of gaol delivery, in order to their trial or discharge, on pain of £5.

GAOLER.

By the 32 *G.* 3. *c.* 8. § 14. the sheriff shall have the power to appoint, remove and discharge the gaoler. § 15. any gaoler knowingly permitting any spirituous liquors or strong waters to be used in the gaol, or brought into the same, except by the order of a physician, shall forfeit £20. § 17. and the justices shall fix a yearly salary to be paid to the gaoler in lieu of all fees. And if the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler by the common law; and this is the cause, that if a prisoner die in gaol the coroner ought to hold an inquest. 3. *Inst.* 91.

For the treatment of prisoners after sentence, see title "EXECUTION."

GRAND JURY.

It has been laid down in general terms, by some of the greatest lawyers, that the grand jury ought only to hear the evidence for the King—that is to say, on the side of the prosecution. 2 *Hale*, 157. But others have received this position with some qualifications. (4 *Bl. Com.* 303.) as indeed it ought to be; for the inquest are sworn to present the truth, and nothing but the truth; and it may so happen that they may not be able to elicit truth from the witnesses on the part of the prosecution only; and they may actually be convinced of that circumstance. The true intention seems to be this, viz.—*prima facie* the grand jury have no concern with any testimony but that which is regularly offered to them with the bill of indictment, on the back of which the names of the witnesses are written; their duty being merely to inquire whether there be sufficient ground for putting the accused party on his trial before another jury of a different description. If nothing ambiguous or equivocal appear on this testimony, they certainly ought not to seek any further; but if their minds be not satisfied of the truth, so far as is necessary for their preliminary inquiry, they are not prohibited from requiring other evidence in explanation of mere facts; but they can proceed no further; for that would be to *try*, although their duty is confined merely to the question "whether there be sufficient pretence for trial." 3 *Inst.* 25. *Dickenson, Q. S.* 96.

The grand jury are sworn to inquire *pro corpore comitatis*, and therefore, by common law, they cannot regularly indict or present any offence which does not arise within the county or precinct for which they are returned. But it seems by the common law, if a fact done in one county prove a nuisance to another, it may be indicted in either. Also by the common law, if one guilty of larceny in one county, carry the goods stolen into another, he may be indicted in either. *Haw. B.* 2. *c.* 25.

The grand jury being sworn, proceed, in a private room, to consider the bills brought before them. Although sworn to secrecy, they may, in cases of difficulty, allow the prosecutor, or his attorney, to assist them, by marshalling the evidence, and examining the witnesses. If any doubts occur on points of law, they should return into court and obtain the opinion of the chairman. A majority of twelve, at the least, is necessary to find the bill; if they be equally divided, or the majority be less than twelve, it is thrown out.

A grand jury must find a *true bill*, or *no bill*, for the whole; which is now usually done by indorsing on it the words "a true bill," or "no true bill," as their decision is; and if they take upon them to find it specially or conditionally, or to be true for one part only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew.

But this rule relates only to cases where the grand jury take upon themselves to find part of *the same count* to be true, and part false, and do not either affirm or deny the fact submitted to their inquiry. But where there are two distinct *counts*, viz. one for riot, and the other for an assault—the grand jury may find a true bill as to the assault, and indorse *ignoramus* as to the riot.

The grand jury may present any offence within their own knowledge, without a bill being sent before them, at the instance of an individual prosecutor, if the offence be one of which they can legally take cognizance. *Haw. B.* 2. *c.* 2. § 51. This presentment is delivered into court, and the clerk of the peace then puts it into the form of an indictment, on which process may issue as in ordinary cases.

GRAND LARCENY.

Grand Larceny is the stealing of the "goods or chattels" of any person above the value of twenty shillings sterling. *Ord. Qu.* 29 *G.* 3. *c.* 3.

See further on this subject post title "Larceny."

GUARDIANS.

By the 8 *G.* 4. *c.* 6. the judge of the provincial court of probate, and the judges of the surrogate court in their respective districts, upon the written application of any infant (or minor) residing within the jurisdiction of such judge, and not having a father living, nor a legal guardian, after 20 days public notice of such application, and proof of 20 days notice to the mother of such infant, or proof to the satisfaction of such judge, that such infant has no mother living in this province, may appoint some suitable and discreet person or persons to be guardian or guardians of such infant, and to require from such guardians a bond in the name of such infant, in such sum as the judge shall direct, conditioned for the faithful performance of the trust, and that such guardians will when their ward shall become of age, or whenever such guardianship shall be determined, if thereto required, render to such ward a true and just account of the property of such ward which shall have come into their hands, and without delay deliver and pay over to said ward the property or balance in hand, deducting a reasonable sum for expenses, which bond shall be recorded by the registrar of said court.

§ 2. The guardians during their office shall have full authority to act on behalf of their ward, and prosecute or defend in his name, and shall have the charge and management of the real and personal estate of such ward, and with the approbation of two justices may bind such ward apprentice.

§ 3. The judge, or his successor, shall have power to remove such guardians upon reasonable complaint, and appoint others.

§ 4. And when the property shall be situated in one district, the right of appointment shall belong to the surrogate court, and if in two districts then to the court of probate; which court shall also be a court of appeal.

§ 5. Appeal shall lie from the court of probate to the governor in council.

§ 6. And the following fees may be demanded and taken by the respective officers:

Official Principal, or Surrogate Judge.

For the appointment of a guardian with seals thereto,.....	£ 0	15	0
For auditing a guardian's account, when required so to do,.	0	10	0
For an order for removing a guardian from his guardianship,	0	3	4

Registrar.

For entering the appointment of a guardian,..... 0 2 6
For entering an order of the judge,..... 0 2 6
For drawing and recording a bond of guardianship,..... 0 6 8
For copies given out of his office—the same as in cases of probate.

HAWKERS AND PEDLERS.

By the 28 *G.* 3. *c.* 5. § 2. (continued by the 3 *W.* 4. *c.* 45. for four years) every hawker, pedler, petty chapman, and any trading person or persons, such person or persons having taken the oaths of allegiance to his Majesty, going from town to town, or to other mens houses, or who have not become householders, by permanent residence in any town or place within this province, by or for the space of one year, previous to the passing of this act, or travelling either on foot or with a horse or horses, mule or mules, or other beast, bearing or drawing burthen, boat or boats, decked vessels or other craft, or otherwise, within this province, carrying to sell or exposing to sale, any goods, wares or merchandize, shall, from and after the 5th April, in this and every ensuing year, take out a license, for which license there shall be paid the following sums: For every man traveller on foot, £5; for every horse, ass, or mule, or other beast, bearing or drawing burthen, an additional £5; for every man sailing with a decked vessel, trading and exposing for sale, goods, wares and merchandizes, on board, or from the same, £20; for every man trading with a boat or other craft, and exposing for sale goods, wares and merchandize, for each boat or craft, £20. By § 2. any justice of the peace, collector, deputy collector, constable or peace officer, may seize and detain any such hawker, &c. who shall be found trading without a license, or being found trading, shall neglect or refuse to produce a license according to this act, after being required so to do, in order to his being carried before three or more justices, nearest to the place where such offence shall be committed, who are thereby required, either upon the confession of the party offending, or due proof by witness or witnesses, other than the informer, upon oath, that the person so brought before them had so traded as aforesaid, without a license; and in case no such license shall be produced, before such justices, the said justices, by warrant under their hands and seals, directed to a constable or other peace officer, shall cause a sum not exceeding £20. nor less than £5. with reasonable costs, to be forthwith levied, by distress and sale of the goods, wares and merchandize of such offender, or of the goods with which such offender shall be found trading, and for want of sufficient distress, the

offender shall be committed to the nearest gaol of the district, for a time not exceeding six months, nor less than one month. § 5. One moiety of all penalties under this act to go to the King for the use of the province, and be paid to the receiver general, and the other moiety to the informer.

By an antecedent statute, 56 *G.* 3. *c.* 34. § 2. British born subjects, or subjects by naturalization, or by conquest, selling leather, hollow ware, farming utensils, or any printed papers published by authority, they being the growth, produce, or manufacture of this province; and persons who are the real makers of any goods, wares or merchandize, of the manufacture of this province, or his, her, or their children, apprentices, agents or servants; as also tinkers, coopers, glaziers, harness menders, or any other person usually trading in mending kettles, tubs, household goods or harness; and hucksters, or persons having stalls or stands in the markets, and exposing to sale fish, fruit, victuals, or goods, wares and merchandize, in such stall or stands, being British subjects, and complying with the rules and regulations respecting such stalls—are all exempt from the hawker's license duty.

By § 4. such licenses shall be granted by the lieutenant governor of the province; and for every such license, there shall be paid by the person applying for the same, 3s. 9d. to the collector for issuing the same. § 5. The collector, before he enter upon his office, shall take and subscribe the following oath, before any two justices in the district where such collector shall reside, to be filed with the clerk of the peace:

I, A. B. do swear that I will well and truly execute, do and perform, the duty of collector of his Majesty's revenue arising on licenses to hawkers, pedlers, and petty chapmen, and other trading persons, as described by an act passed in the fifty-sixth year of his Majesty's reign, entitled, "an act for granting to his Majesty duties on licenses to hawkers, pedlers, and petty chapmen, and other trading persons therein mentioned," and will duly and impartially superintend the collection thereof, according to the best of my skill and knowledge; and in all cases of fraud, or suspicion of fraud, that shall come to my knowledge, I will shew no person favor or affection, nor will I aggrieve any person from hatred or ill will; and that I will in all cases faithfully do, execute and perform, to the best of my skill and knowledge, all and every the duties imposed upon me by the before mentioned act. So help me God.

Sec. 6. Every collector shall give security for the due performance of his office, himself in £400, and two sureties in £200 each.

Sec. 10. Suits for penalties must be commenced within twelve months. Sec. 11. And if any person summoned as a witness shall

neglect or refuse to appear, without reasonable excuse, he shall forfeit £10, with costs, to be recovered as hereinbefore directed, and for want of distress be committed for any time not exceeding two months, nor less than one month. Sec. 12. One moiety of all penalties to go to the king for the use of the province, and to be paid to the receiver general, and the other moiety to the informer. Sec. 13. Actions against any persons under this act to be commenced within six months. Sec. 14. This act not to authorise any person licensed as aforesaid to sell any goods which shall not be the bona fide property of the person so licensed. Sec. 15. No license necessary for the sale of wheat, flour, pease, beans, oats, barley, indian corn and meal, rye, staves and heading, oak, pine and fir timber, and other lumber, pot and pearl ashes, furs and skins (not dressed) beef, (fresh) sheep, swine, and live cattle, cheese, butter, and all other articles of provision.

Information.—(Archbold.)

Home district } Be it remembered that on the —— day of ——
to wit. } in the year of our Lord —— at —— in the said district, A. B. of —— in the district aforesaid, yeoman, who as well for our sovereign lord the king as for himself doth prosecute in this behalf, personally cometh before J. P. esq. R. S. esq. and T. U. esq. three of his Majesty's justices of the peace for the said district, and residing nearest to the place where the offence hereinafter mentioned was committed, and as well for our said lord the king as for himself informeth us, that C. D. late of —— in the district aforesaid, labourer, on the —— day of —— in the year aforesaid, being then a hawker, [hawker, pedler, petty chapman, or any other trading person,] going from town to town, [or to other men's houses,] and travelling on foot &c. [or as the case may be,] in the province of Upper Canada, carrying to sale, and exposing to sale, divers goods, wares and merchandizes, did at —— in the said home district, as a hawker, as aforesaid, expose to sale, [or carry to sale] divers goods, wares and merchandizes, to wit, [five pieces of linen, three pieces of muslin, one hundred yards of lace, &c.] without such license as in that behalf is required by the statute in that case made and provided, contrary to the form of the statute in such case made and provided; whereby, and by force of the statute in such case made and provided, the said C. D. hath forfeited for his said offence the sum of twenty pounds, wherefore the said A. B. who sueth as aforesaid prayeth the consideration of us, the said justices, in the premises, and that the said C. D. may be convicted of the offence aforesaid, and that one moiety of the said forfeiture may be adjudged to our said lord the King, and the other moiety thereof to the said A. B. according to the

form of the statute in that case made and provided; and that the said C. D. maybe summoned to appear before us and answer the premises, and make his defence thereto. Exhibited before us, &c.

The above information need not be upon oath; the complainant should merely subscribe his name thereto.

Conviction.

As the act does not provide any particular form of conviction, it will be proper to use the form given in the 2. *W.* 4. *c.* 4. See title "*Conviction*," *p.* 139.

Warrant of Distress. (Archbold.)

Home District, to wit. } To the Constable of —— in the said district, and to all other Constables in and for the said district.

Whereas C. D. late of —— in the said district, hawker, was on this day (or on the —— day of —— instant) duly convicted before us —— three of his Majesty's justices of the peace for the said district, for that he the said C. D. [&c. *stating the offence as in the conviction*] against the form of the statute in that case made and provided; and we the said —— thereupon adjudged the said C. D. for his said offence, to [&c. *setting out the adjudication as in the conviction*]; and whereas the said C. D. being so convicted as aforesaid, and being required to pay the said sums, hath not paid the same, or any part thereof, but therein hath made default. These are therefore to command you forthwith, to make distress of the goods and chattels of the said C. D. or of the goods with which the said C. D. shall be found trading, and if within the space of —— (not less than four nor more than eight days; see 27 *G.* 2. *c.* 20. § 1.) days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one moiety of the said sum of —— so forfeited as aforesaid, together with the said sum of —— for costs, unto A. B. who hath informed us of the said offence; and the said other moiety of the said sum of —— so forfeited as aforesaid, unto the use of his Majesty, rendering the overplus, on demand, unto the said C. D. the reasonable charges of taking, keeping and selling the said distress, being first demanded; and if no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had therein, as to the law doth appertain. Given under our hands and seals, &c.

Constable's return thereto.

Home District, to wit. } I, W. T. constable of —— in the district aforesaid, do hereby certify —— esquires, three of

his Majesty's justices of the peace for the said district, that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned C. D. and the goods and chattels with which the said C. D. was found trading, and that I can find no sufficient goods or chattels of the said C. D. or sufficient goods and chattels with which he was found trading as aforesaid, whereon to levy the sums within mentioned. Witness my hand the —— day of ——

Commitment for want of Distress.

Home District, to wit. } To the Constable of —— in the said district, and to the Keeper of the gaol at Toronto in the said district. Whereas C. D. late of —— [&c. *as in the warrant of distress, setting forth the offence as laid in the information, together with the conviction and adjudication;*] and whereas, afterwards, on the —— day of —— in the year aforesaid, we the said —— issued a warrant to the constable of —— commanding him to levy the said sums by distress and sale of the goods and chattels of the said C. D. and the goods and chattels with which the said C. D. was found trading; and whereas it appears to us, as well by the return of the said constable to the said warrant of distress, as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D. and for the goods and chattels with which the said C. D. was so found trading as aforesaid, but that no sufficient distress can be found whereon to levy the same. These are therefore to command you the said constable of —— aforesaid, to take the said C. D. and him safely to convey to the gaol at —— aforesaid, and there to deliver him to the keeper of the said gaol, together with this precept: and we do hereby command you the said keeper of the said gaol, to receive the said C. D. into the said gaol, there to imprison him for the space of —— calendar months, and for your so doing this shall be your sufficient warrant. Given under our hands and seals, at —— in the district aforesaid, this —— day of ——. &c.

N. B. The proceedings subsequent to the conviction, may be under the hand and seal of *one* of the justices only, for which special provision is made in the 2 *W.* 4, *c.* 4. See title '*Conviction.*'

HEIRS AND DEVISEES.

By the 45 *G.* 3. *c.* 2. (revived and continued by several acts, and lastly, by the 59 *G.* 3. *c.* 18.) the lieutenant governor is authorised to appoint certain commissioners, (including one of the judges) which commissioners are to ascertain who are the heirs or devisees of the nominees of the crown. § 2. Claimants, either

personally or by agent, are to produce before the commissioners documentary proofs of their claims, to be verified upon oath, administered by such commissioners, who are also authorised to summon witnesses to attend, under a penalty of £20. § 3. The commissioners shall, after examination, reject or allow the claim, and report thereon accordingly; which report shall be final, and be addressed to the lieutenant governor, who shall thereupon be empowered to direct letters patent to issue for the lot specified in such report, to or in trust for such claimants; but such letters patent are not to affect prior incumbrances. § 4. Where any such nominee, in his lifetime, shall have executed any instrument charging the land, it shall be lawful for the person holding the same to register it in the office of the registrar for the county where the lot lies; and such instrument shall have the same effect as if the nominee had, at the time of its execution, been in possession of the crown patent. § 5. The commissioners are also authorised to determine the claims of heirs or devisees of persons allowed lands under former commissioners, and report upon the same accordingly; and letters patent shall thereupon issue to such heirs or devisees. Sec. 6. If during the sitting of the commissioners, or within thirty days after their report, and before the letters patent shall have issued, it shall appear that such claims shall have been allowed by surprise, or have been erroneously made, the commissioners are authorised to re-hear such claim, and report thereon accordingly, and award such costs against the first claimants as they may think proper. Sec. 8. No claim shall be examined unless notice specifying such claim, and the names of the claimants; the numbers of the lots; concessions; names of the townships—be put up in some conspicuous part of the office of the clerk of the peace for the district in which such lots are situated, and until a certificate shall be produced to the commissioners, signed by the clerk of the peace, that such notice had been so put up, at least thirty days before the claim heard by the commissioners. Sec. 9. In all cases of adverse claims, the commissioners may defer the hearing, and enlarge the time for the production of evidence. Sec. 10. And the commissioners, or any three of them, including one of the judges, may issue commissions for the examination of witnesses. Sec. 12. And may order the payment of the expenses of such witnesses by the party producing such evidence. Sec. 13. The commissioners may appoint a clerk. Sec. 14. This act to be read by the clerk of the peace at the opening of every general quarter sessions.

By the 52 *G.* 3. *c.* 9. § 2. the sittings of the commissioners shall be holden at York, once in the year, during fifteen days, to commence on the first monday in July.

By the 59 *G.* 3. *c.* 18. assignees of nominees who are dead, or who have left the province, may bring their claims in the same manner as assignees under the second clause of the 48 *G.* 3.

By 4 *G.* 4. *c.* 7. persons claiming under any heir, devisee, or assignee of the original nominee, may claim such lands in the same manner as any heir, devisee, or assignee of the original nominee, upon giving due notice, to be put up in the court-house of the district at least three months before the sitting of the commissioners; and the same to be proclaimed by the crier, immediately after the charge to the grand jury. Sec. 2. After referring to the second clause of the 48 *Geo.* 3. which only authorised the hearing of claims preferred by the assignees of original nominees who were dead, or had left the province previous to the passing of that act, the provisions of that act are to extend to claims where the original nominees have since died, or left the province, or may hereafter die or leave the province, without obtaining a patent. Sec. 3. And when any claim shall be allowed, the lieutenant governor is authorised to issue letters patent to, or in trust for, the persons to whom such claims have been allowed; and that all the provisions of the 45 *G.* 3. in anywise touching or relating to the claims of the heirs or devisees, or assignees of the nominees of the crown, mentioned in said acts, shall be extended to claimants under this act. Sec. 4. Commissioners appointed in any district to take affidavits under the said acts of the 45 and 48 *G.* 3. may take affidavits under this act; and any person forswearing, shall be guilty of perjury.—And by the 10 *G.* 4. *c.* 4. commissioners for taking affidavits in the king's bench may take affidavits relative to claims under the heir and devisee acts; and false swearing to be perjury.

Notice,

From the heir, devisee, or assignee of the original nominee, to be put up in the office of the clerk of the peace, thirty days before the sitting of the commissioners.—*See* 45 *G.* 3. *c.* 2.; 59 *G.* 3. *c.* 18.

Notice is hereby given, that A. B. of the city of Toronto, in the home district, yeoman, will claim before the commissioners appointed to ascertain the heirs and devisees of original nominees of the crown to lands not under patent, at their sittings at Toronto, in the month of July next, lot number —— in the —— concession of the township of —— in the —— district, [*here describe any other lot also under claim*] as eldest son and heir-at-law, (or as assignee or devisee under the will) of C. D. late of —— the original nominee.

Certificate thereon.

Office of the clerk of the peace, for the home district. } I do hereby certify, that the within written notice was put up in a conspicuous place in this office, on the —— day of —— last past, and has remained so put up until this day.

Dated at Toronto, the —— day of —— 18—.

S. W. *Clerk of the peace*, *H. D.*

Notice,

From other persons claiming under any heir, devisee, or assignee, and to be put up in the court-house three months before the sitting of the commissioners.—*See* 4 *G.* 4. *c.* 7. § 2.

The same form as the above, concluding thus:—(as the eldest son and heir-at-law of A. B. who was the eldest son and heir-at-law of C. D. &c. (or as assignee, or devisee) of D. E. who was the assignee of C. D. &c. the original nominee.)

Certificate thereon.

Office of clerk of the peace, for the home district. } I do hereby certify, that the within written notice was put up in the court-house at the city of Toronto, in the district aforesaid, on the —— day of —— last, and has remained so put up until this day: And further, that the said notice was proclaimed in open court at the general quarter sessions of the peace for the said district, held in the month of —— last, at Toronto aforesaid, immediately after the charge to the grand jury, pursuant to the statute in such case made and provided.

Dated at Toronto aforesaid, the —— day of —— 18—.

S. W. *Clerk of the peace*, *H. D.*

HIGHWAYS.

A HIGHWAY is a public passage for all the king's liege subjects, for which it is denominated in legal proceedings, the king's highway. *Deacon's C. L.* 567. A way may also become a public highway by a dedication of it by the owner of the soil to the public use; and eight years, without any impediment, has been held sufficient dedication. 11 *East.* 375.

All injuries to a highway—as by digging a ditch, or making a hedge across it, or laying logs of timber in it, or by doing any other act which renders it less commodious, are public nuisances at common law, and indictable. 1 *Haw. c.* 76 § 144. On an in-

dictment for obstruction to a highway the judgment of the court is usually a fine, as well as an order on the defendant to abate the nuisance; in order to warrant a judgment for *abating* a nuisance it must be alleged in the indictment to be continuing. *R. v Stead.* 8 *T. R.* 142. The statute 50 *G.* 3. *c.* 1. however, provides a summary remedy for the conviction of petty nuisances on the highways, and imposes a penalty of 40s. upon any person stopping or incumbering the same. Sec. 13. And a penalty of 10s. upon the owner of the adjoining *enclosed* land not removing trees which have fallen across the road.

By statute 50 *G.* 3. *c.* 1. § 2. entitled, "an act to provide for the laying out, amending, and keeping in repair, the public highways and roads, and to repeal the laws now in force." Justices in sessions in April, in every year, (except in the districts of London and Johnstown; and in London in June, and Johnstown in May,) are to appoint one or more surveyors of the highways in each county and riding, to lay out and regulate the highways and roads within such county or riding, who shall take the following oath, to be administered by the said justices:—I, A. B. do swear that I will faithfully and diligently discharge the duty of a surveyor of highways, agreeably to the provisions of an act passed in the 50th year of his majesty's reign, entitled 'an act to provide for the laying out, amending, and keeping in repair, the public highways and roads in this province, and to repeal the laws now in force for that purpose." So help me God.

And upon complaint made to the sessions of the incompetency of such surveyor, he shall be removed. § 3. Upon application, in writing, by twelve freeholders of any such county or riding, that any public highway is inconvenient, and may be altered so as better to accommodate his majesty's subjects and others travelling thereon, or that it is necessary to open a new highway or road, the surveyor is required to examine the same and report thereon, in writting, to the justices at their next quarter sessions, describing the alteration intended to be made, or new highway or road to be opened, giving public notice thereof by affixing a copy of such report in two or more most public places next to the place where the alteration is intended to be made; and if no opposition be made to such report, the justices shall confirm the same, and direct such alteration, highway or road, to be made accordingly; and in case of opposition, and proof of due notice to the surveyor, the justices shall direct a jury of twelve disinterested men to be empannelled as jurors, who, after hearing evidence upon oath, shall upon their oath confirm or annul the said report, or alter and modify the same as the case may require, and their verdict shall be final; and the said justices shall direct such highway or road to be altered or

opened accordingly, and the same shall be a common and public highway; but it shall not be lawful for such highway to lead through any orchard or garden, or to remove any building, without the owners consent. § 4. Justices in sessions, if necessary, may employ a surveyor of lands to lay out or alter such highway or road, who shall be paid out of the district treasury at 10s. a day. (Sec. 5. repealed by 4 *G.* 4 *c.* 10. § 1.) § 6. All bridges and causeways hereafter to be built shall not be less than 15 feet wide, and trees standing upon any adjoining unenclosed or unimproved lands may be cut down for building or repairing such bridges or causeways. § 7. Good and sufficient fences to be erected near deep water or dangerous precipices. § 8. Seven shillings and six pence a day to be paid to the surveyor while necessarily employed, to be ordered by justices in sessions, and paid by the treasurer of the district. § 9. The surveyor may sell the land through which an old road has passed, and grant the same to any purchaser under his hand and seal, unless the owners of the land through which the road shall pass are willing to take the same as a compensation, in such case the surveyor shall convey the same accordingly. § 10. The price of the land sold shall be paid to the owner of the land through which the new road shall pass, and if not satisfied the surveyor shall report such further claim at the next sessions, and give notice to the owner to appear, and a jury of twelve disinterested persons shall, upon oath, determine whether any, and what further sum shall be paid: such verdict to be final; and any further sum awarded shall be paid upon an order from the justices by the treasurer of the district. Sec. 11. Justices at a special sessions, in March, shall divide their respective parishes, townships or ridings, into divisions, which they shall allot to the respective overseers; and the said justices may, from time to time, order any overseer to work upon any highway or road within his division as they shall think necessary; and the overseer shall, within ten days after such order, summon the persons within his division liable to statute duty or labor to work on such road, and shall direct them to destroy all weeds that are hurtful to husbandry, and every person neglecting such order shall be fined as a wilful defaulter for the day; and any overseer neglecting to summon such persons, and set them to work shall, for every neglect forfeit 40*s*. Sec. 12. All allowances for roads, by king's surveyors, and all roads under any act of parliament, or any roads whereon the public money has been expended, or statute labour done, or any roads passing through Indian lands, shall be deemed common and public highways, unless any have been altered according to law. Sec. 13. Any person stopping or incumbering any such roads, or destroying any fence along lands or precipices, or railing of

bridges, shall forfeit 40*s.* for every offence. (Sec. 14. relates to the appointment of overseers of highways. See 33 *G.* 3. *c.* 2. and 46th *c.* 5. and for towns 4 *G.* 4. *c.* 9.) Sec. 15. The overseers shall make out a list of every person who is the owner of a cart, wagon, plough, sled or team, within their division; and likewise, of all the inhabitants liable to work npon the highways, a copy of which, signed by the overseer, shall be delivered to the justices of the peace acting within the county or division, within twenty days after overseers appointed; and the overseers shall carefully and diligently collect the compositions and forfeitures within the year he is overseer, and shall keep a book of the duty or labour done, compounded for, or unperformed, and of all monies, (to be verified on oath, if required,) received by such overseers, and the application thereof; and of all sums due and owing for compositions and forfeitures, which book shall be delivered to the justices at some special sessions, in March, every year. Sec. 16. That the roads and highways through every township, &c. shall be cleared, repaired, and maintained by the inhabitants thereof, and every person liable to work under this act shall, in person, or by a sufficient person in his stead, work on the said road, and shall bring one spade, one pick-axe, bar, or such other useful tool or instrument as he may be owner of, and be directed by the overseers to bring, allowing eight working hours; and every person keeping a cart, wagon, or team of two horses, oxen or beasts of burden or draft, shall send, on a day, to be appointed by the overseer, a cart, wagon or team, and one able man to drive the same, for such time as he shall be liable to work on the said roads, to work on the highways, roads, streets or bridges, eight hours each day, which day's work shall be equivalent to two days personal labour; and if any labourer or driver shall be negligent, the overseer may discharge him, and he shall incur the forfeiture which the person would have incurred in case such labourer had not attended with such team and cart. §. 17. The overseer shall give each person liable to work, three days notice, either verbally or in writing, at the house, of the day, hour and place, upon which each of said day's duty shall be performed, and every person having a cart, wagon or team, neglecting to attend, (not having compounded) or to send such cart &c. shall forfeit 10*s.*; and every person liable to personal labour not appearing, or sending a sufficient man in his stead, with such tool or instrument, at the place appointed, shall pay 5*s.* to the use of the highways in the township. (§ 18. repealed by 56 *G.* 3. *c.* 39. § 1.) § 19. Compositions may be paid to the overseer, to be in full for statute labour, for the current year, and such compositions shall be applied to the use of the highways. § 20. When any additional money shall be required for any parti-

cular work of manifest advantage to the public, the surveyors shall certify the same to the justices in sessions, with an estimate, and the justices at a subsequent sessions may order such work to be done, not exceeding £50. out of the district treasury. § 21. Owners of land shall remove trees that have fallen across the highways, within twenty-four hours, under the penalty of 10*s*. per day, after notice. § 22. All fines and forfeitures under this act, to be recovered before any two or more justices, by confession, or upon oath of one witness, and shall be levied by distress and sale, and in default of such distress, commitment to the common gaol for any time not exceeding one month, unless the fines and forfeitures, costs and charges, shall be sooner paid; and the produce of all such fines, &c. shall be applied towards the roads and bridges within the township or division where they shall arise. § 23. Overseers neglecting to apply composition money to the use of the highways, or refusing to account for the same, upon conviction, by confession, or oath of one witness, may be committed to the common gaol until he shall render a true account, under oath, and pay same into the hands of such justices; such imprisonment not to exceed three months. § 24. The money received by the justices, shall by them be paid to the overseer for the next year, to be applied by him as other composition money. § 25. Overseer swearing falsely, liable to the punishment of perjury. (§ 26. repealed by 56 *G*. 3. *c*. 39. § 1.) § 27. After any fall of snow, by which any highway shall be obstructed, overseers may direct such and so many persons liable to work on the said highways, next adjoining the same, possessed of a sleigh or sledge and team, to open a free passage, by driving such sleighs or sledges through the said highway. § 28. Overseers may require the inhabitants liable to work, to set up on each side of the highway, or over any frozen waters, stakes or beacons to direct travellers: penalty for neglect, the same as neglecting to perform statute labour. § 29. Two justices may hold a special sessions from time to time, for the purposes of this act, and to adjourn the same, giving six days notice of the time and place of such special sessions and the adjournments thereof. (§ 30 repealed by 59 *G*. 3. *c*. 8. § 2.) § 31. If the name of any person shall be omitted in the assessment roll, he shall, nevertheless, be liable to work. § 32. Justices in special sessions may lessen the statute labour when the whole shall not be required. § 33. Overseers not liable to any action for any thing done under an order of the justices. § 34. Actions to be commenced within three calendar months. General issue may be pleaded, and special matter given in evidence, with treble costs to the defendant if plaintiff shall become nonsuit, or verdict for defendant. § 35. Freehold and soil of highways to be vested in his Majesty.

By 52 *G.* 3. *c.* 10. when any roads shall be laid out under the authority of the 8th. clause of the 50 *G.* 3. that shall not be confirmed by the justices in quarter sessions, the surveyors charges shall be paid by the party applying for such survey.

By 56 *G.* 3. *c.* 39. every male inhabitant, from the age of 21 years to 50, not rated or assessed, shall be compelled to work on the highways three days in every year, within the township where he resides, under the same penalty as is imposed by act on persons rated; and the overseer shall certify, so as to prevent his being called out again in another township during the same year.

By 59 *G.* 3. *c.* 8. § 2. every person included in the assessors roll shall work on the highways in proportion to such assessment, viz:

If his property be not rated at more than £25,.....	2 days.
If at more than £25, and not more than £50,.....	3 "
If at more than £50, and not more than £75,.....	4 "
If at more than £75, and not more than £100,.....	5 "
If at more than £100, and not more than £150, ...	6 "
If at more than £150, and not more than £200, ...	7 "
If at more than £200, and not more than £250, ...	8 "
If at more than £250, and not more than £300, ...	9 "
If at more than £300, and not more than £350, ...	10 "
If at more than £350, and not more than £400, ...	11 "
If at more than £400, and not more than £450, ...	12 "
And for every £100 above £500, till it amounts to £1,000,	1 "
And for every £200 above £1000, till it amounts to £2,000,	1 "
And for every £300 above £2000, till it amounts to £3,500,	1 "
And for every £500 above £3500,.....	1 "

Provided, that every person possessed of a wagon, cart, or team of horses, oxen, or beasts of burthen or draft, used to draw the same, shall be liable to work on the highways not less than three days. Sec. 3. Lands subject to assessment, but not included in the assessment, shall be rated at one-eighth of a penny per acre, annually, for amending the roads, to be levied and collected as other rates and assessments. Sec. 4. The treasurer may receive such rates, and the collector may proceed to distress and sale. Sec. 5. Such rates to accumulate one-third if in arrear three years; one-half for five years; and double, if eight years; and thenceforward in double the amount. Sec. 6. The treasurer to keep an account. Sec. 8. Collector to pay over receipts to the treasurer, retaining 5 per cent. Sec. 9. Warrant of distress, 2s. 6d.; milage, 4d.; sale and return, 2s. Sec. 11. Overseers shall render an account, upon oath, of the monies expended under this act; and monies not expended shall be paid over to their successors. Sec. 12. Justices, at any special or petty sessions, may, upon application, exempt any indigent person not rated more than £25, or poor emigrants intending to become settlers, and not resident six

months in the province, having first given notice to the overseer, from statute labour on the highways, and all composition in lieu thereof.

By 4 *G.* 4. *c.* 9. § 1. the 59 *G.* 3. is made perpetual. Sec. 2. Any person liable to perform statute labour, (except such as being resident in any town, shall be liable to perform more than six days labour) may compound for such duty, at 2s. 6d. per day. Sec. 3. And any person resident in any town, and liable to more than six days labour in any one year, *shall*, in lieu of labour, pay to the surveyor of streets, to be appointed as hereinafter mentioned, on or before the first of May in each year, 2s. 6d. for each day's duty. Sec. 4. Justices of the peace in sessions, or at any adjourned sessions, may appoint a surveyor of streets in and for each town, and remove such officer at their will and pleasure. Sec. 5. Such surveyor of streets shall, before entering upon office, take an oath, in open court, that he will well and faithfully execute the duties thereof, (repealed, in part, by 8 *G.* 4. *c.* 14) and shall, with two sureties, to be approved by such justices, enter into a bond to his Majesty, his heirs and successors, in such sum as to the justices may seem meet, to account for all monies he may receive. Sec. 6. Justices may, at any special sessions holden for the purpose, order the street surveyor to amend any street; and the surveyor shall, within ten days, summon persons liable to statute labour, and order them to work thereon, under the like penalty for neglect or refusal imposed by any former act. Sec. 7. Commutation money may be also expended on such streets. Sec. 8. And in repairing any highway or bridge in the vicinity of the town. Sec. 9. And the surveyor so acting shall be discharged from any action of trespass. Sec. 10. The laws for appointing overseers of highways for any *town*, repealed. Sec. 11. Justices in quarter sessions may order remuneration to the surveyors of streets, to be retained by such surveyors out of monies received by them. Sec. 12. If any person liable to pay money in lieu of statute labour shall neglect to pay the same to the surveyor of streets authorised to demand the same, within ten days after demand, it shall be lawful for any two justices, upon proof on oath, to issue their warrant for levying double the amount, with costs, by distress and sale. Sec. 13. Tenth clause of the 59 *G.* 3. so far as relates to the expenditure of money by overseers, repealed; and the treasurer shall pay to the order of the magistrates in sessions, in March, all such money as may have been collected by the rate of one-eighth of a penny per annum, to be laid out by the said justices by contract or otherwise, to the best advantage, on the highways within the township where the land lies.

By 4 *G.* 4. *c.* 10. § 2. No road shall be more than 66, nor less than 40 feet wide; but not to affect roads now established. Sec. 3. If any road shall be altered, the new one shall not be less in width than the old. Sec. 4. Justices of the peace, at their special sessions in March, or in general quarter sessions, by application in writing, signed by 12 freeholders, at the least, may apply part of the statute labour of such township on the highways of any adjoining township, if it shall appear advantageous, in such proportion as such justices shall think fit. Sec. 5. When any person liable to one-eighth of a penny per acre shall expend any money on roads in the township, &c. where the same is situated, or cause it to be done, the approbation of the justices having been first obtained, the said justices, upon application at any subsequent sessions, if it appear that the same has been laid out to advantage, may order the treasurer to set off the amount against any arrears accrued on said lands, or such part as may appear to have been expended for the good of the town, &c. where situated. Sec. 6. When application is made where any road laid out or altered, those making it (after sale of the old road, and proceeds paid to the owner) shall be liable to pay any sum which a jury, as by law directed, shall ascertain; if the owner, agent, &c. shall within three months from the date of the report of such new road, &c. make application for compensation according to law, no order shall issue for statute labour thereon, unless a discharge or acquittal for the same; or release for the land taken for such purpose, from the owners; or proof of a tender of the value so ascertained, be produced to the quarter sessions; but nothing in this act to prevent the said justices directing payment out of the district money, if it shall appear that the alteration is of manifest public utility, and not merely local. Sec. 7. repeals 9th. clause of the 50 *G.* 3. so far as regards government appropriations; but this clause not to restrain any surveyor of highways from selling and conveying any road which he is now authorised to do. Sec. 8. Any person may compound, by paying 5s. a-day for each cart or wagon, team and driver, and 2s. 6d. per day for each day's labour.

By 8 *G.* 4. *c.* 14. so much of the 4 *G.* 4. *c.* 9. as requires the oath of street surveyors for towns to be taken in open court, (except those towns in which the court is holden) is repealed. Sec. 2. Such street surveyors may take the oath, and give the required security, before any justice of the peace in which such towns shall be situated. Sec. 3. Such justice to transmit the same to the clerk of the peace.

By 11 *G.* 4. *c.* 7. the inhabitants, at their annual town meetings, may choose any number of surveyors, not exceeding 30; and one pound-keeper to each public pound, not exceeding 6, the situation

whereof shall be designated at some town meeting, and recorded in the minutes of the meeting. Sec. 2. No distress shall be taken out of the township. Sec. 3. Such overseers and pound-keepers to be chosen as heretofore, and to have the like powers.

Oath to be taken by Surveyor of Streets.

You, A. B. do promise and swear, that you will faithfully, diligently and justly, serve and perform the office and duties of street surveyor for —— according to the best of your abilities. —So help you God.

Appointment of Surveyors. (50 *G.* 3. *c.* 1. § 2.)

Home District, } At the general quarter sessions of the peace,
to wit. } holden at —— in and for the said district, on the —— day of —— in the —— year of the reign of our sovereign lord William the fourth, of the united kingdom of Great Britain and Ireland King, defender of the faith, and so forth, before J. P. and K. P. esquires, and others, justices of our said sovereign lord the King, assigned to keep the peace in the said district, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said district committed—

It is ordered, that the following persons be appointed surveyors of the highways in the several undermentioned townships in this district, for the year ensuing, that is to say—

For the township of —— A. B. of the same, yeoman.
For the township of —— C. D. of the same, yeoman.
&c. &c. &c. &c. &c.

And it is further ordered, that the clerk of the peace do forthwith duly notify the same to the said surveyors.

By order of the court. J. K. *Clerk of the peace.*

Application to a Surveyor, for altering or opening a Road, &c.

To Mr. A. B. surveyor of the township of —— in the district of ——

We, the undersigned, freeholders of the township of —— in the said district, do hereby respectfully state, that the public highway leading from [*here describe the road*] in the said township, and in the neighbourhood of us the said freeholders, now in use, is inconvenient, and may be altered so as better to accommodate his Majesty's subjects, and others travelling thereon, by, &c. [*here describe the proposed alteration; or, if intended to open a new road, say after the word "inconvenient"—and that it is*

necessary to open a new road, for the better accommodation of his Majesty's subjects, &c.; and that such new road should be, &c.—[here describe the proposed route.] And we do hereby require you, the said surveyor, to examine the same, and report thereon, in writing, to the justices, at their next general quarter sessions of the peace for the said district.

Witness our hands, the ——— day of ——— 183—.

Surveyor's Report thereon.

To the Justices of the Peace at their general quarter sessions, to be held at ——— in and for the district of ——— on the ——— day of ———.

I do hereby certify to the said court of quarter sessions, that I have examined the road mentioned and referred to in the within written notice, and that I approve of the following alteration being made [describing the same] or, that I recommend a new road to be made [describing the same].

Witness my hand the ——— day of ——— 18—.

Notice thereof.—Pursuant to the Statute.

Notice is hereby given, that I, the undersigned A. B. surveyor of the township of ——— in the ——— district, having been duly required to examine and report upon a proposed alteration of the public highway, or road leading from ——— to ——— in the said township, have examined the same, and intend to make my report thereon in writing, to his Majesty's justices of the peace, at the next general quarter sessions of the peace to be holden at ——— in and for the said district, on ——— the ——— day of ——— and that the following is a copy of my report, intended to be made as aforesaid. [*Here give a copy of the report.*] Witness my hand the ——— day of ——— 183—.

A. B. *Surveyor.*

Notice of Opposition.

To Mr. A. B. Surveyor of the township of ——— in the ——— district.

Take notice, that at the next general quarter sessions of the peace to be holden at ——— in and for the said district, I, (or we) shall oppose the alteration of the public highway or road leading from ——— to ——— in the said township, mentioned in your report, dated the ——— day of ———. Witness my (or our) hand the ——— day of ——— 183—.

Order for altering or opening a Road.

Home District } At the general quarter sessions, &c. Upon the
to wit. } the application of ——— freeholders of the town-

ship of ——— in the said district, for the alteration of the public highway or road leading from ——— to ——— in the said township, [or for a new road, &c.] and upon considering the report of A. B. surveyor of the said township duly made thereon, and no opposition being made thereto—It is ordered that [*here describe the alteration. &c.*]

The like where Opposition is made.

And such alteration having been opposed, and thereupon a jury impannelled and sworn, pursuant to the statute in such case made; and such jury having heard evidence upon oath, touching the premises, and by their verdict confirmed (or annulled) the said report.—It is ordered &c. or, where a modification is determined upon,—and by their verdict confirmed the said report, subject to such alteration and modification as hereinafter is expressed.—It is ordered, &c.

Conveyance, by the Surveyor, of the old Road.

Know all men by these presents, that I, A. B. of the township of ——— in the district of ——— surveyor of the said township, for and in consideration of the sum of ——— of good and lawful money of Upper Canada, to me in hand paid by G. M. of ——— in the said district, yeoman, the receipt whereof I do hereby acknowledge, have granted, bargained, sold and conveyed, and by these presents do, as such surveyor as aforesaid, grant, bargain, sell and convey, unto the said G. M. his heirs and assigns, all that parcel of land, late being the public highway or road leading from ——— to ——— commencing at, &c. and ending at, &c. containing by admeasurement ——— acres, or thereabouts, [*an accurate description, with abuttals, should be inserted*] To have and to hold the said parcel of land and premises, hereby granted and conveyed, with all their appurtenances, unto and to the only proper use and behoof of the said G. M. his heirs and assigns for ever. In witness whereof, I have hereunto set my hand and seal, the ——— day of ——— 183—.

To A. B. Surveyor of the township of ——— in the district of———

I, the undersigned, B. D. do hereby signify to you, the above named surveyor, that I am not satisfied with the payment of the sum of ——— being the money arising from the sale of the late highway or road in the said township, as an indemnification for the land through which the new road passes, and of which I was the owner; and that I claim the sum of ——— as a further compensation for the same.

Witness my hand, the ——— day of ——— 183—.

Notice by the Surveyor to the Owner, to appear at the Sessions.

To Mr. B. B. of the township of —— in the district of ——.

Take notice, that you are hereby required by me, pursuant to the statute in such case made and provided, to appear at the next general quarter sessions of the peace, to be holden at —— in and for the said district, when your claim of —— for further compensation for the land comprising the public highway or road lately made through your land, will be inquired into and determined according to law.

Witness my hand, the —— day of —— 183—.

Order for Compensation.

At the General Quarter Sessions, &c.

At this sessions, B. D. of the township of —— in the said district, yeoman, having appeared, pursuant to notice to him given, by A. B. surveyor of the said township, respecting his claim for further compensation for the land now comprising the public highway or road lately made upon his land, viz. the road leading from —— to —— in the said township; and a jury having been at this sessions impannelled thereon and sworn, pursuant to the statute in such case made and provided, and by their verdict determined that the further sum of —— should and ought to be allowed to the said B. D. for the said land—It is ordered, that the treasurer of the district do pay him the same accordingly.

Information against a Defaulter, for not doing Statute Labour, pursuant to the 50 *G.* 3. *c.* 1. § 17. *(Penalty,* 5*s.)*

—— District, } The information and complaint of A. B. of the
to wit. } township of —— in the said district, yeoman, one of the overseers of the highways in the said township, taken on oath, this —— day of —— before us C. D. esq. and G. H. esq. two of his Majesty's justices of the peace for the said district; the said informant saith, that G. G. late of the township aforesaid, yeoman, being a person liable to perform certain duty and labour upon the public highways, in the said township of —— pursuant to the statute in such case made and provided; and having been duly notified and summoned to attend and perform such his duty and labour aforesaid, upon the highways within the division allotted to this informant, in the said township, to wit, [*here describe the particular part of the road*] in the township and division aforesaid, on Tuesday, the —— day of —— last, he the said G. G. did not, either by himself personally, or by any other person in

his stead, attend and perform such, his duty and labour, at the time and place aforesaid, nor hath he the said G. G. paid to this informant, any sum of money whatever, by way of composition, in lieu thereof, but the said G. G. in the premises hath wholly made default, contrary to the form of the statute in such case made and provided: wherefore the said A. B. prayeth, that the said G. G. may be convicted in the sum of five shillings, pursuant to the statute in such case made and provided, and that the said G. G. may be summoned to answer the premises, and make his defence thereto. Sworn before us, &c.

Summons thereon.

—— District, } To the Constable of the township of ——.
to wit. } Whereas information and complaint upon oath, hath been made before us C. D. esq. and G. H. esq. two of his Majesty's justices of the peace for the said district, that [*here set out the matter charged in the information, to the conclusion*].— These are therefore to command you, forthwith to summon the said G. G. to appear before us, at —— in the town of —— in the said district, at the hour of —— in the forenoon of the same day, to answer the premises, and further to do and receive what to the law shall appertain. Herein fail not. Given under our hands and seals, &c.

The Conviction,

Should be framed according to the general form given by the 2 *W.* 4. *c.* 4. see ante title '*Conviction.*' It is not however necessary, that it should be actually made out *instanter;* it will be sufficient to make a minute of the conviction, and at any subsequent period it may be drawn up in due form.

Distress Warrant.

—— District, } To the Constable of —— in the said district.
to wit. } Whereas G. G. late of —— in the said district, yeoman, was on this day duly convicted before us C. D. esq. and G. H. esq. two of his Majesty's justices of the peace for the said district, for that he the said G. G. &c. [*stating the offence as in the conviction*] contrary to the form of the statute in such case made and provided; and we the said C. D. and G. H. thereupon adjudged the said G. G. for his said offence, to forfeit and pay the sum of five shillings, to be paid and distributed according to the form of the statute in such case made and provided; and whereas, the said G. G. being so convicted as aforesaid, and being required to pay the said sum of five shillings, hath not paid the same or any

part thereof, but therein hath made default. These are therefore to command you, forthwith to make distress of the goods and chattels of the said G. G. and if within the space of —— *(not less than four days, nor more than eight days; see* 27 *G.* 2. *c.* 20. § 1.) days next after the making such distress, the said sum, together with the reasonable and necessary charges of such distress and sale, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the said sum of five shillings to A. B. one of the overseers of the said township, to be by him applied to the use of the highways in the said township, according to the statute in such case made and provided, rendering the overplus, if any, on demand, to the said G. G. after deducting the necessary charges of such distress and sale; and if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein, as to the law doth appertain. Given under our hands and seals &c.

The Costs.

As the statute does not seem to authorise expressly, any distress or sale for the costs, it will be safer to proceed for the costs under the 18 *G.* 3. *c.* 19. § 1. At the time of the conviction, the justices should also assess and award the costs, pursuant to this statute, and then demand the payment thereof, at the same time with the penalty. If neither should be paid, (nor security given for the costs) the justices should, by a separate warrant, in the form given by the above statute, issue a distress warrant also for the costs. For the form necessary herein, see *ante* general title '*Costs.*' *p.* 141.

Constables Return on the Distress Warrant.

—— District, } I, W. T. Constable of —— in the district afore-
to wit. } said, do hereby certify C. D. and G. H. esquires, two of his Majesty's justices of the peace for the said district, that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned G. G. and that I can find no sufficient goods or chattels of the said G. G. whereon to levy the sum within mentioned. Witness my hand the —— day of —— 183—.

W. T.

Commitment for want of Distress.

—— District, } To the Constable of —— in the said district, and
to wit. } to the Keeper of the common gaol at —— in the said district. Whereas G. G. late of —— yeoman, was on the

—— day of —— last past, duly convicted before us, C. D. and G. H. esqrs. two of his Majesty's justices of the peace for the said district, for that he the said G. G. [*stating the offence as in the conviction*] contrary to the form of the statute in such case made and provided; and we the said C. D. and G. H. thereupon adjudged the said G. G. for his said offence, to forfeit and pay the sum of five shillings, to be paid and distributed according to the form of the statute in such case made and provided; and whereas, afterwards, on the —— day of —— in the year aforesaid, we the said C. D. and G. H. issued two several warrants to the constable of —— commanding him to levy the said sum of five shillings, by distress and sale of the goods and chattels of the said G. G. as also the sum of —— for costs, awarded by us in the said matter, pursuant to the statute in such case made and provided; and whereas, it appears to us as well by the returns of the said constable to the said warrants of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said G. G. but that no sufficient distress can be found whereon to levy the same: These are therefore to command you, the said constable of —— aforesaid, to take the said G. G. and him safely to convey to the common gaol at —— aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and we do hereby command you, the said keeper, to receive the said G. G. into the said common gaol, there to imprison him the said G. G. for the space of —— [not exceeding one month,] unless the said sums shall be sooner paid; and for so doing this shall be your sufficient warrant. Given under our hands and seals, &c.

N. B. The above form may be easily adapted for other cases arising under this statute, viz: the 50 *G.* 3. *c.* 1.

Information against a Laborer or Driver for negligence.

50 *G.* 3. *c.* 1. (penalty 10s.)

—— District, } The information and complaint of A. B. &c.
to wit. } [as before] the said informant saith that B. K. late of the township aforesaid, labourer, being a person hired and sent by one T. M. of the aforesaid township, yeoman, with a certain horse and cart to work on the highways in the division allotted to this informant, on the —— day of —— pursuant to the statute in such case made and provided, and while so being at work, upon the said highways in the said division, with such horse and cart as aforesaid, did [*refuse or neglect to work, or to carry good and sufficient loads during the said day,*] contrary to the statute in such case made and provided, and that in consequence thereof he, this informant, did discharge the said B. K. on the said —— day of —— last from working on the said highways,

and before the hours of working thereon were ended, pursu the provisions of the statute in such case made and provided; w fore the said A. B. prayeth that the said B. K. may be conv &c. [*as in the last.*] Sworn before us, &c.

Information against the owner of a cart, wagon or team, for n forming Statute Labor.—50 *G.* 3. *c.* 1. § 17. *(penalty* 10s

——— District, } The information and complaint of A. I
to wit. } [as before.] the said informant saith th L. late of the township aforesaid, yeoman, being the own possessed of a certain cart, [*wagon or team of two horses, o used to draw the same.*] and liable to send on the day herei mentioned the said cart, [*wagon or team, &c.*] and one abl to drive the same, to work on the highways within the di allotted to this informant in the said township, pursuant statute in such case made and provided, and having bee notified and required, did make default by not sending suc [*wagon or team.*] with an able man to drive the same, to w the said highways in the said division, to wit, on Tuesday th day of ——— last, he the said K. L. not having paid any c sition to this informant for the duty and labor aforesaid, cc to the statute in such case made and provided; wherefore t A. B. prayeth, &c. [*as in the first information.*]

Information for stopping and incumbering a Public Highway the 50 *G.* 3. *c.* 1. § 13. (*penalty two pounds.*)

——— District } The information and complaint of A. B. {
to wit. } *before.)* the said informant saith that O. of the township of ——— in the said district, on the ——— ——— last, did, as this informant hath been informed and b wilfully cause a certain public highway, in the said to leading from [*here describe the road*] to be stopped up *cumbered*] by lodging and depositing in and upon the said highway a quantity of lumber, [*or by whatever other me thoroughfare was impeded,*] contrary to the statute in su made and provided, [*add also, if such be the case, and thi mant further saith, that the obstruction aforesaid still re* wherefore the said A. B. prayeth, &c. *(as before.)* Swor us, &c.

Information against a party for not removing a fallen tree Road.—50 *G,* 3. *c.* 1. § 21. (*Penalty* 10*s.*)

——— District } The information and complaint of A. B.
to wit. } *before.*] The said A. B. saith that a cer having been cut down (or fallen) out of certain enclosed

longing to C. D. of the said township, yeoman, across a certain public road and highway in the said township, near unto and next adjoining the said enclosed land of the said C. D. he, this informant, did, on the —— day of —— instant, personally notify the same to him the said C. D. and at the same time require him the said C. D. to remove the same; and this informant further saith, that the said C. D. hath neglected to remove the said tree out of the said public road and highway, within the space of twenty-four hours after having been so notified and required to do so as aforesaid, and that the said tree is still remaining upon and across the said public road and highway, there incumbering the same, contrary to the statute in such case made and provided: Wherefore this informant prayeth, &c. [*as before.*]

Sworn, &c.

Information against an Inhabitant of a Town, for the non-payment of composition for Statute Labour, for the space of ten days after demand.—See 4 *G.* 4. *c.* 9. § 12. *(Penalty double the amount.)*

—— District, } The information and complaint of A. B. of the
to wit. } town of —— in the district of —— surveyor of streets for the said town, taken on oath this —— day of —— before us C. D. esq. and G. H. esq. two of his Majesty's justices of the peace for the said district: The said A. B. saith that E. F. of the said town of —— being a person liable to pay money in lieu of statute labour, to wit, the sum of —— unto him the said A. B. as such street surveyor as aforesaid, under and by virtue of a certain act of parliament, made and passed in the fourth year of the reign of his late Majesty King George the fourth, entitled, "an act to amend and make perpetual an act passed in the fifty-"ninth year of his late Majesty's reign, entitled, 'an act to re-"peal part of, and amend the laws now in force for laying out "and amending, and keeping in repair, the public highways and "roads in this province; and also to amend an act passed in the "fiftieth year of his late Majesty's reign, entitled, 'an act to pro-"vide for the laying out, amending, and keeping in repair, the "public highways and roads in this province, and to repeal the "laws now in force for that purpose"—he, this informant, did, after the said sum of —— had so become due to him the said A. B. as such street surveyor as aforesaid, to wit, on the —— day of —— demand payment thereof, of and from him the said E. F.; but the said E. F. refused to pay the same, and still doth refuse and neglect to pay the same, contrary to the statute in such case made and provided: Wherefore the said A. B. prayeth that the said E. F. may be convicted in double the amount of the said composition, to wit, the sum of —— pursuant to the statute, &c. [*as before.*] Sworn, &c.

Oath of the Overseer, verifying his account. 50 *G.* 3. *c.* 1. § 15.

A. B. of the township of —— in the —— district, yeoman, late one of the overseers of the highways in the said township, maketh oath and saith, that the account now exhibited and subscribed by this deponent, contains a just, true, and fair account of all such money as hath come into the hands of this deponent as such overseer, in respect to his division in the said township; and to whom; and on what occasion the same has been paid and applied; and also of all sums of money that remain due and owing from any person or persons, in respect of payments, compositions or forfeitures, for and in respect of the said highways, within the year for which this deponent was appointed overseer, ending ——.

Sworn before us, ——

Information against a Surveyor, for neglecting to summon a person liable to Statute Labour, pursuant to 50 *G.* 3. *c.* 1. § 11.—*(Penalty* 40 *shillings.)*

—— District, } Be it remembered, that on the —— day of ——
to wit. } in the year of our lord —— at —— in the said district, C. D. of —— in the said district, yeoman, personally cometh before us, J. P. esquire, and D. H. esquire, two of his Majesty's justices of the peace for the said district, and informeth us that A. B. late of the township aforesaid, yeoman, late one of the overseers of the highways of the said township, and while being such overseer as aforesaid, to wit, between the —— day of —— 18— and the —— day of —— 18—, did neglect and refuse to summon J. K. late of the same township, yeoman, to work and labour upon the highways in the said township, within the division allotted to him the said A. B. he the said J. K. then being a person liable to work and labour upon the highways aforesaid, within the division aforesaid, contrary to the form of the statute in such case made and provided, whereby the said A. B. hath forfeited for his said offence the sum of forty shillings.—Wherefore the said C. D. prayeth, &c. [*as before.*]

Exhibited before us.

N. B.—This information should not be upon oath, and may be laid by any indifferent person: it requires only the *signature* of the party; and it will be incumbent on him, at the hearing, to prove by the witness J. K. himself, that he did not work on the roads, and was not at any time summoned so to do.

The "summons," and "other proceedings," ont his and the several preceding informations, will be the same as the first.

Information against an Overseer for neglecting to apply composition money. 50 *G.* 3. *c.* 1. § 23.

—— District, } Be it remembered, that on the —— day of ——
to wit. } in the year of our lord —— at —— &c. [*as before.*] That A. B. late one of the overseers of the highways of the said township, hath neglected and refused to apply, or duly to account for, certain composition money, to wit, the sum of —— by him received as such overseer, for and on account of the highways in the said township, to the use of the highways in the said township, in the manner directed by —— esquires, justices of the peace for the said district, at a special sessions held by them the said justices, at —— in the said district, on the —— day of —— last, contrary to the statute in such case made and provided. Wherefore the said C. D. prayeth that the said A. B. may be duly convicted of the said offence, and may be summoned to answer the premises and make his defence thereto.

Exhibited before us.

N. B.—This information should not be upon oath.

Summons thereon,

The same as the first.

Commitment thereon.

—— District, } To the constable of the township of —— in the
to wit. } said district; and to the keeper of the gaol at —— in the said district.

Whereas A. B. late of the township of —— late one of the overseers of the said township, was this day duly convicted before us —— two of his Majesty's justices of the peace for the said district, for that he the said A. B. being one of the overseers, &c. [*here set out the matter charged in the information*] contrary to the form of the statute in such case made and provided: And whereas the said A. B. being so convicted as aforesaid, and being now required to pay the said sum of —— pursuant to the act in such case made and provided, hath not paid the same, or any part thereof, or rendered any true account thereof, but herein hath made default: These are therefore to command you, the said constable of —— aforesaid, to take the said A. B. and him safely to convey to the gaol at —— aforesaid, and there to deliver him to the said keeper thereof, together with this precept: And we do hereby command you, the said keeper of the said gaol, to receive the said A. B. into your custody at the said gaol, there to

imprison him for the space of three months, unless he shall in the mean time render a true account of such composition money under oath, and shall pay, or cause the same to be paid, in the manner, and according to the terms and directions of the statute in such case made and provided; and for so doing, this shall be your sufficient warrant.

Given under our hands and seals, &c.

Indictment for digging a hole in a Street, being the King's Highway. C. C. C.

Home District, } The jurors, &c. That A. F. late of, &c. yeoman
to wit. } on the, &c. with force and arms, at the township aforesaid, in the county and district aforesaid, in a certain street, being the King's common highway there, called yonge street, used for all the King's subjects, with their horses, coaches carts and carriages, to go, return, ride, pass, re-pass, and labour at their free will and pleasure, unlawfully and injuriously did dig and cause to be dug, a certain pit, containing in circumference fifteen feet, and in depth thirteen feet; and the same pit so as aforesaid dug and caused to be dug in the street and highway aforesaid, from the —— day of —— in the year aforesaid, until the —— day of the same month, in the year aforesaid, at the township aforesaid, in the county and district aforesaid, unlawfully and injuriously did continue; by reason whereof the King's subjects, during the time aforesaid, could not go, return, pass re-pass, ride and labour, with their horses, coaches, carts and other carriages, in, by, and through the same street and highway, as they were wont, and ought to do, without great peril and danger of their lives, to the great damage and common nuisance of all the liege subjects of our said lord the King, in, by, and through the same street and highway, going, returning, passing, re-passing riding and labouring, and against the peace, &c.

Indictment for stopping up a Watercourse, whereby the Highway is overflowed.

Home District } The jurors for our lord the King upon their oath
to wit. } present, that A. O. late of the township of —— in the district aforesaid, on the —— day of —— in the —— year of the reign —— with force and arms, at the township aforesaid, in the district aforesaid, a certain ancient watercourse adjoining to the King's common highway within the same township, leading from —— to —— with gravel and other material unlawfully and injuriously did obstruct and stop up, and the said

watercourse so as aforesaid obstructed and stopped up from the said —— day of —— in the year aforesaid, until the day of the taking of this inquisition, at the township aforesaid, in the district aforesaid, unlawfully and injuriously hath continued, and still doth continue, by reason whereof the rain and waters that were accustomed, and ought to flow and pass through the said watercourse, on the same day and year, and divers other days and times afterwards between that day and the day of the taking of this inquisition, did overflow and remain in the King's common highway aforesaid, and thereby the same was, and yet is, greatly hurt and spoiled, so that the liege subjects of our said lord the King, through the same way with their horses, wagons, carts and carriages, then and on the said other days and times could not, nor yet can, go, return, pass, ride and labour, as they ought and were accustomed to do, to the great damage and common nuisance, &c.

HABEAS CORPUS.

If bail cannot otherwise be obtained, the law hath provided a remedy in most cases, by the *habeas corpus* act, 31 *G.* 2. the substance of which is briefly this:—If the commitment is for treason or felony, plainly and specially expressed in the warrant of commitment; also, if any person is committed, and charged as accessory before the fact to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment; in such cases the person shall not be bailed on a writ of habeas corpus; otherwise he may be bailed.—Also, if a person is committed for treason or felony, specially expressed, yet, if he shall in open court, the first week of the term, or first day of assize, petition to be tried, and shall not be indicted some time in the next term or assize after the commitment, he shall upon motion, the last day of the term or assize, be bailed, unless it shall appear to the judge, upon oath, that the King's witnesses could not be produced within that time, and then, if he is not tried in the second term or assize, he shall be discharged. Previous to the aforesaid bailment, the prisoner or some person on his behalf, shall demand of the officer or keeper, a true copy of the warrant of commitment, which he shall deliver in *six hours*, on pain of £100. to the party grieved, for the first offence; and £200. and forfeiture of his office for the second: then application is to be made in writing by the prisoner, or any person for him, attested and subscribed by two witnesses, who were present at the delivery thereof to the court of chancery, king's bench, common pleas, or exchequer; or if out of term time, to the lord chancellor, or one of the judges;

and a copy of the warrant of commitment shall be produced before them, on oath made that such copy was denied: but, if any person hath wilfully neglected by the space of two terms to apply for his enlargement, he shall not have a *habeas corpus* granted in the vacation. This being done, the lord chancellor or judges, respectively, shall award an *habeas corpus*, under the seal of the court, on pain of £500. to be marked in this manner, *per statutum tricesimo primo caroli secundi regis*, and signed by the person that awards the same, and shall be directed to the officer or keeper, returnable *immediately;* and the charges of bringing the prisoner shall be ascertained by the judge or court that awarded the writ, and indorsed thereon, not exceeding twelve pence a mile: then the writ shall be served on the keeper, or left at the gaol, with any of the under officers, and the charges so indorsed, shall be paid or tendered to him, and the prisoner shall give bond to pay the charges of carrying him back, if he shall be remanded, and that he will not make any escape by the way. This done, the officer shall, within three days after service, (if it is within twenty miles) return the writ, and bring the body, and shall then certify the true cause of the imprisonment; if above twenty miles and less than one hundred, then within ten days; if above one hundred, then within twenty days; on like pains as before. But, after the assizes are proclaimed for the county where the prisoner is detained, he shall not be removed: then if it shall appear to the lord chancellor or judges, that the prisoner is detained on a legal process, order or warrant, out of some court that hath jurisdiction of criminal matters, or by warrant of a judge or justice of the peace, for matters for the which by the law he is not bailable, in such case the prisoner shall not be discharged: if he shall be discharged, he shall thereupon enter into recognizance to appear on his trial, and the writ and return thereon, and recognizance, shall be certified into court where the trial must be; but persons charged in debt, or other action, or with process in any civil cause, after their discharge for a criminal offence, shall be kept in custody for such other suit; and persons so set at large, shall not be recommitted for the same offence, unless by order of court, on pain of £500. to the party grieved.

HOMICIDE.

HOMICIDE in law signifies the killing of a man by a man. 1 *Haw.* 66. and may be classed according to the following degrees:

1—Justifiable homicide,
2—Homicide by misadventure,
3—Homicide by self-defence,
4—Manslaughter,
5—Murder,
6—Self-murder.

1. *Justifiable Homicide,*

To make homicide justifiable, it must be owing to some unavoidable necessity, to which the person who kills another must be reduced, without any manner of fault in himself. 1 *Haw.* 69. If any evil disposed person shall attempt feloniously to rob or murder any person in any dwelling-house or highway, or feloniously attempt to break any dwelling-house in the night time, and shall happen in such felonious intent to be slain; the slayer shall be discharged. 24 *H.* 8. *c.* 5. So, if rioters, or forcible enterers or detainers, stand in opposition to the justices' lawful warrant and any of them be slain, it is no felony. *Hale's. Pl.* 37. And if a man come to burn my house and I shoot out of my house, or issue out of my house and kill him; it is no felony. *Hales. Pl.* 39. So, if a woman kill him that assaulteth to ravish her, it is no felony. *Ib.* 39. If a person having actually committed a felony, will not suffer himself to be arrested, but stands on his own defence, or flies, so that he cannot possibly be apprehended alive by those who pursue him, whether private persons or public officers, with or without a warrant, he may be lawfully slain by them. 1 *Haw.* 70. So, if a felony hath actually been committed, and an officer having lawful warrant, arrest an innocent person, and such person assault the officer, the officer is not bound by law to give back, but to carry him away; and if in execution of his office, he cannot otherwise avoid it, but, in striving, kill him; it is no felony. 3 *Inst.* 56. Also, if a person arrested for felony break away from his conductors to gaol, they may kill him if they cannot otherwise take him. But in this case likewise there must have been a felony actually committed. *Hale's Pl.* 36. 37. Also, if a criminal endeavouring to break the gaol assault his gaoler, he may be lawfully killed by him in the affray. 1 *Haw.* 71. In *civil cases*, although the sheriff cannot kill a man who flies the execution of a civil process, yet if he resist the arrest, the sheriff or his officers need not give back, but may kill the assailant. *Hale's Pl.* 37. So, if in the arrest and striving together, the officer kill him, it is no felony. *Ib.* 37. In all these cases the party upon arraignment having pleaded not guilty, the special matter must be found; whereupon the party shall be dismissed without any forfeiture or pardon purchased. *Ib.* 38.

2. *Homicide by Misadventure.*

Homicide by misadventure is where a man is doing a lawful act without intent of hurt to another, and death *casually* ensues. *Hale's Pl.* 31. As where a labourer being at work with a hatchet the head flies off, and kills one who stands by. 1 *Haw.* 73. Or where a third person whips a horse, on which a man is riding,

whereupon he springs out and runs over a child, and kills him, in this case the rider is guilty of homicide by misadventure, and he who gave the blow, of manslaughter. 1 *Haw.* 73. But if a person riding in the street whip his horse to put him into speed, and run over a child and kill him, it is homicide, and not by misadventure; and if he ride so, in a press of people with intent to do hurt, and the horse killeth another, it is murder in the rider. 1 *H. H.* 476. If a person drive his cart carelessly, and it run over a child in the street, if he have seen the child and yet drive on upon him it is murder; but if he saw not the child, yet it is manslaughter; but if the child had run the cross way, and the cart run over him before it were possible for the carter to make a stop, it is by misadventure. 1 *H. H.* 476. So, where workmen throw stones, rubbish, or other things from a house, in the ordinary course of their business, by which a person underneath happens to be killed, if they look out and give timely warning to those below, it will be homicide by misadventure; if without such caution it will amount to manslaughter, at least, if it was a lawful act, but done in an improper manner. *Fost.* 262. 263. If the act be unlawful it is murder; and if a person meaning to *steal* a deer, in another man's park, shoot at the deer and by the glance of the arrow killeth a boy that is hidden in a bush, this is murder; for that the act was unlawful although he had no intent to hurt the boy, nor knew of him. But if the owner of the park had shot at his own deer, and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and no felony. 3 *Inst.* 56. And it is a general rule in case of all felonies, that wherever a man intending to commit one felony happens to commit another, he is as much guilty as if he had intended the felony which he actually commits. 1 *Haw.* 74.

Homicide by misadventure, though not felony, yet a person guilty thereof is not bailable by justices of the peace, but must be committed to the assizes. 1 *Haw.* 75. But if he is taken only on a slight suspicion, the justices of the peace may bail him. 2. *Haw.* 105.

3. *Homicide by Self-defence.*

Homicide in a man's own defence is, where one who hath no other possible means of preserving his life from one who combats with him, on a sudden quarrel, kills the person by whom he is reduced to such an inevitable necessity. 2. And not only he, who upon assault, retreats to a wall or some such strait, beyond which he can go no farther, before he kills the other, is judged by law to act upon unavoidable necessity; but also he, who being assaulted in such a manner and in such a place, that he cannot go back with-

out manifestly endangering his life, kills the other without retreating at all. 3. And notwithstanding, a person who retreats from an assault to the wall, give the other wounds in his retreat, yet, if he give him no mortal one till he get thither, and then kill him, he is guilty of homicide *se defendendo* only. 1 *Haw.* 75. 4. But if the mortal wound was first given, then it is manslaughter. *Hale's Pl.* 42. 5. And an officer who kills one that resists him in the execution of his office; and even a private person that kills one who feloniously assaults him in the highway, may justify the fact, without ever giving back at all. 1 *Haw.* 75. 6. But if a person upon malice *prepense* strike another, and then fly to the wall, and there in his own defence kills the other, this is murder. *Hale's Pl.* 42. A person guilty of this offence cannot be bailed by justices of the peace. 1 *Haw.* 76. But otherwise, if taken only on a slight suspicion. 2 *Haw.* 105.

4. *Manslaughter.*

By manslaughter is to be understood—1. Such killing of a man as happens either on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all. 1 *Haw.* 76. 2. The difference between murder and manslaughter is, that murder is committed upon *malice aforethought*, and manslaughter *without* malice aforethought, upon a sudden occasion only: as, if two meet together, and striving for the wall the one kill the other, this is manslaughter and felony; and so it is if they had upon a sudden occasion gone into a field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood was never cooled till the blow was given. 3 *Inst.* 55. There can be no accessories to this offence, before the fact, because it must be done without premeditation. 1 *Haw.* 76. But there may be accessories after the fact. 3 *Inst.* 55.

The punishment for this offence, formerly, was burning in the hand and forfeiture of goods and chattels, for which punishment, that of imprisonment for a year and the imposition of a fine, was afterwards substituted by the 19 *G.* 3. *c.* 74. This offence is bailable by two justices, under the 1 & 2 *Ph. & M. c.* 13. and 3 *W.* 4. *c.* 3.

5. *Murder.*

Murder, is when a man of sound memory and of the age of discretion unlawfully killeth another under the king's peace, with malice aforethought, either expressed by the party or implied by

law, so as the party wounded or hurt die of the wound or hur within a year and a day. 3 *Inst.* 47.

By *malice expressed* is meant, a deliberate intention of doing any bodily harm to another, whereunto by law a person is not authorised. 1 *H. H.* 451. the evidences of which are—1. Lying in wait. 2. Menacings antecedent. 3. Former grudges. 4. Deliberate compassings and the like. 1 *H. H.* 451.

Malice implied is in several cases, as where one voluntarily kills another without any provocation; for in this case the law presumes it to be malicious, and that he is a public enemy of mankind. 2. Poisoning also implies malice, because it is an act of deliberation. 3. Also, when an officer is killed in the execution of his duty, it is murder, and the law implies malice. 1 *H. H.* 455. 456. 457. 4. Also where a prisoner dieth by duress of the gaoler, the law implies malice, by reason of the cruelty. 3 *Inst.* 52. 5. And in general, any formed design of doing mischief may be called malice; and therefore not such killing only as proceeds from premeditated hatred or revenge, but also, such as is accompanied with those circumstances that shew the heart to be perversely wicked, is adjudged to be of *malice prepense*, and consequently murder. 2 *Haw.* 80. *Strange* 766. No breach of a man's word or promise, no trespass either to lands or goods, no affront by bare words or gestures, however false or malicious and aggravating, will excuse him from being guilty of murder, who is so far transported thereby, as immediately to attack the person who offends him, in such a manner as manifestly endangers his life, without giving him time to put himself upon his guard, if he kills him in pursuance of such an assault, whether the person slain did at all fight in his defence or not. 1 *Haw.* 82.

If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch his weapon, and the one killeth the other—this is no *malice prepensed;* for the fetching of the weapon and going out into the field, is but a continuance of the sudden falling out, and the blood was never cooled; but if there were deliberation—as, where they meet the *next* day,—nay, though it were the same day, if there were such a competent distance of time, that in common presumption, they had time to deliberate—then it is murder. 3 *Inst.* 51. 1 *H. H.* 453. And the law so far abhors all duelling in cold blood, that not only the principal, who actually kills the other, but also his seconds, are guilty of murder, whether they fought or not; and the seconds of the party slain are likewise guilty, as accessories. 1 *Haw.* 82.

If a physician or surgeon give a person medicine with intent to cure or prevent a disease, and contrary to his expectation it kill the person—this is no homicide. 1 *H. H.* 429. But if a

woman be with child, and any one give her a potion to destroy the child within her, and it work, and so strongly that it kills the woman—this is murder. 1 *H. H.* 430. But if a woman, quick with child, by a potion or otherwise, killeth it in her womb; or if a man beat her, whereby the child dieth in her body, and she is delivered of a dead child—this is not murder, but a great misprision. If the child be born alive, and then die of the potion, battery, or other cause—this is murder. 3 *Inst.* 50. Lord Hale says, that in this case it cannot be legally known whether the child were killed or not; and that if the child die after it is born and baptised, of the stroke given to the mother, yet it is not homicide. 1 *H. H.* 433. And Mr. Dalton says, whether it die within her body, or shortly after her delivery, it maketh no difference. *Dalt.* 330. But Mr. Hawkins says, that (in the latter case) it seems clearly to be murder, notwithstanding some opinions to the contrary. 1 *Haw.* 80. And if a person counsel or advise a woman to kill her child when it shall be born, and she afterwards kill it, in pursuance of such advice, he is an accessory to the murder. 1 *Haw.* 80.; and by 3 *W.* 4. *c.* — § 12. accessories before the fact to any capital offence shall suffer death.

They that are present when any man is slain, and do not their best endeavour to apprehend the murderer or manslayer, shall be fined and imprisoned. 3 *Inst.* 53. Where any person shall be feloniously stricken or poisoned in one county, and die in another county, the offender may be indicted in the county where the party dies. 2 & 3 *Ed.* 6. *c.* 24. § 2.; and where a murder is committed in one county, and a person is accessory in another county, he may be indicted in the county where he was accessory, on certificate of the conviction of the principal in the county where he committed the murder. § 4. Sentence, in case of murder, shall be pronounced in open court, immediately after conviction, unless the court shall see reasonable cause for postponing the same. 25 *G.* 2. *c.* 37. § 3.—*See further on this subject under title "Conviction."*

6. *Self Murder.*

A *felo-de-se*, or felon of himself, is a person who being of sound mind, and of the age of discretion, voluntarily killeth himself. 3 *Inst.* 54. 1 *H. H.* 411. The offender herein incurs a forfeiture of goods and chattels, but not of lands; for no man can forfeit his land without an attainder by course of law. 3 *Inst.* 54. He shall also be buried ignominiously, in the highway, with a stake driven through his body. 4 *Bl.* 190.

Commitment for Murder. (Archbold.)

Home District, to wit. } J. P. esquire, one of his Majesty's justices of the peace for the said district, to the constable of —— in the said district, and to the keeper of the common gaol at Toronto, in the said district.

These are to command you, the said constable, in his Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. B. charged this day before me, the said justice, on the oath of C. D. of —— and others, for that he the said A. B. on the —— day of —— in the year of our lord —— at —— in the said district, feloniously, wilfully, and of his malice aforethought, did kill and murder one C. D. by stabbing him the said C. D. with a knife, in and upon the left side of the belly, and on other parts of the body of him the said C. D. thereby giving him divers mortal wounds, of which said mortal wounds the said C. D. instantly died: And you the said keeper are hereby required to receive the said A. B. into your custody in the same common gaol, and him there safely to keep, until he shall be thence delivered by due course of law.

Given under my hand and seal, the —— day of —— 183—.

J. P.

Of a Woman, for the Murder of her Bastard Child.

[*Commencement as before.*] on the —— day of —— in the year of our lord —— at the township of —— in the said district, feloniously, wilfully, and of her malice aforethought, did kill and murder a certain male bastard child, which she had then lately before brought forth, by choaking and strangling the same; of which said choaking and strangling, he the said male bastard child, instantly died: And you the keeper, &c. [*as before.*]

HORSES.

The stealing of a horse is felony at common law, and is punishable by imprisonment or banishment.

By the 2 & 3 *P. & M. c.* 7. and 31 *El. c.* 12. The keeper of every fair and market shall yearly appoint a certain special and open place where horses shall be sold in any fair or market overt. 2. And shall appoint one or more persons to take toll there, and to keep the same place from ten in the forenoon till sunset. 3. And the sale or exchange, in any fair or market overt, of any stolen horse shall not alter the property, unless the same shall be in the

time of the said fair or market openly ridden, led, walked, driven, or kept standing, for one hour together at least, between ten of the clock and sunset, in the open place of the fair or market wherein horses are commonly used to be sold, and not within any house, backside, or other privy or secret place. 4. Nor unless all the parties to the bargain shall come together, and bring the horse to the open place appointed for the toll-taker, or for the book-keeper, where no toll is due. 5. Nor unless such toll-taker, or (where no toll is paid) the book-keeper, or chief officer of the fair or market, shall take upon him perfect knowledge of the seller, and of his true christian name and surname and place of abode, and shall enter all the same down in a book to be kept for that purpose, or else that the seller shall bring to the toll-taker, or other officer aforesaid, one credible person that shall testify that he knoweth the seller, and his true name, surname, mystery and dwelling place, and there enter the same; and also the name, surname, mystery and dwelling place, of him that so avoucheth his knowledge. 6. Nor less he also cause to be entered the true price. 7. And also the colour, and one special mark at least. 8. And the buyer shall pay the toll, if any is due, if not, then 1d. for the entry. 9. Which done, the person entering the same shall give to the buyer, requiring, and paying 2d. for the same, a note in writing of all the contents of such entry, subscribed with his hand. 10. Every person offending in any of the premises shall forfeit £5; half to the king and half to him that shall sue before the justices in sessions, or in any ordinary court of record; and the sale shall be void; and the owner may seize and take his horse again, or have an action.

And if any horse shall be stolen, and shall afterwards be sold in open market, and the sale shall be in conformity with the above provisions, yet, nevertheless, such sale, in six months after the felony done, shall not take away the owners property, so as claim be made in six months, where the horse shall be found, before the mayor, if in a town corporate, or else before a justice near the place where found, and so that proof be made before such magistrate in forty days next ensuing, by two witnesses, that the property in such horse was in the party claiming, and was stolen from him within six months next before such claim; but the party from whom the same was stolen may at all times after, notwithstanding such sale, take again the said horse, on payment, or readiness to offer, to the party who hath possession, so much as he shall swear, before such magistrate, that he paid for the same.

By the 22 & 23 *Car.* 2. *c.* 7. When any person shall, in the night, maliciously kill or destroy any horses, he shall be guilty of felony, and may be transported, by three justices in sessions, for seven years. 2. And if any person shall, in the night time, mali-

ciously wound or hurt any horses, he shall forfeit to the party grieved treble damages, to be recovered by action at law, or before three justices.

By the 33 *G.* 3. *c.* 2. § 6. The pound-keeper is directed to impound any stoned horse, more than a year old, running at large, until the owner shall pay 20*s*.

Warrant to apprehend a Horse Stealer.—(Toone.)

To —— Constable of ——

—— District, } Forasmuch as A. B. of —— in the said district
to wit. } yeoman, hath this day made information and compl' int upon oath before me, J. C. esquire, one of his majesty's justices, &c. that yesterday, in the night, a bay mare, the property of him the said A. B. was feloniously stolen, taken, and carried away, from and out of the grounds of him the said A. B. at —— aforesaid, and that he hath just cause to suspect, and doth suspect that C. D. late of —— labourer, did feloniously steal, take, and carry away, the said mare: these are therefore to command you forthwith to apprehend him the said C. D. and bring him before me, to answer to the said information and complaint, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, this —— day of ——

HOUSE OF CORRECTION.

By the 50 *G.* 3. *c.* 5. it is enacted, that until houses of correction shall be erected, the common gaol in each of the district shall be a house of correction; and that all idle and disorderly persons, rogues, vagabonds, and incorrigible rogues, or any persons by law subject to be committed to a house of correction shall be committed to the said common gaols; any law or usage to the contrary.

HUE AND CRY.

Hue and cry is the old common law process after felons, and such as have dangerously wounded any person. 2 *H. H.* 98. If the person against whom the hue and cry is raised be not found in the constablewick, then the constable shall give notice to the next constable; and he to the next; until the offender be found or till they come to the sea side. 3 *Inst.* 116. And the officer of the town where the felony was done, as also every officer to whom the hue and cry shall come, ought to send to every other town round about him, and not to one next town only. *Dal*

c. 54. By statute 3 *Ed.* 1. *c.* 9. all shall be ready and apparelled at the commandment and summons of sheriffs; (or constables. 2 *Inst.* 171.) and at the cry of the country to sue and arrest felons, on pain of a grievous fine; and they which levy not hue and cry, or pursue not hue and cry, may be indicted, fined and imprisoned. 3 *Inst.* 117.

Warrant to levy Hue and Cry. (Burn.)

—— District. } To all constables, and other officers, as well in the said district as elsewhere, to whom the execution hereof doth belong.

Whereas A. J. of —— in the said district hath this day made information upon oath, before me, J. P. esq. one of his Majesty's justices of the peace in and for the said district, that on this present —— day of —— in the —— year of the reign of our sovereign lord King —— betwixt the hours of —— and —— in the afternoon of the same day, at a place called —— in the said district, in the King's highway, there two malefactors and felons, to him the said A. J. unknown, in and upon him the said A. J. then and there being, in the peace of God and of our lord the King, feloniously did make an assault, and him the said A. J. then and there feloniously did put in great fear and danger of his life; and the sum of —— of lawful money of Upper Canada, of the monies and property of him the said A. J. from the person, and against the will of him the said A. J. then and there violently and feloniously did steal, take, and carry away; and that one of the malefactors and felons aforesaid [is a tall, strong man, and seemeth to be about the age of —— years; is pitted in the face with the small-pox; and hath the scar of a wound under his left eye; and had then on a dark brown riding coat, &c. and did ride upon a bay gelding, with a star on his forehead; and the other, &c.] and that after the said felony and robbery committed, they the said malefactors and felons, to him the said A. J. unknown, did fly, and withdraw themselves to places unknown, and are not yet apprehended: These are therefore to command you, forthwith to raise the power of the towns within your several precincts, and to make diligent search therein for the persons above described, and to make fresh pursuit, and hue and cry, after them, from town to town, and from county to county, as well by horsemen as by footmen, and to give due notice thereof in writing, describing in such notice the persons and the offence aforesaid, unto every next constable on every side, until they shall come to the sea shore, or until the said malefactors and felons shall be apprehended; and all persons whom you, or any of you, shall,

as well upon such search and pursuit as otherwise, apprehend, or cause to be apprehended, as justly suspected for having committed the said robbery and felony, that you do carry forthwith before some one of his said Majesty's justices of the peace in and for the district where he or they shall be so apprehended, to be by such justice examined, and dealt withal according to law: and hereof fail you not, respectively, upon the peril that shall ensue thereon.

Given under my hand and seal, at —— in the said district, the —— day of —— in the year aforesaid.

INDECENCY.

ALL open and gross indecency, is a *misdemeanor* at common law, and is indictable, not only as a nuisance to the rest of the community, but as being injurious to public morals. 2 *Str.* 790. 4 *Bl. Com.* 65. It is an indictable offence for a man to undress himself on the beach and bathe in the sea near inhabited houses. *R. v. Crumden*, 2 *Camp.* 89. This offence is punishable by fine, or imprisonment—or both.

Indictment against a Man, for publicly exposing his naked person.
(ARCHBOLD.)

Home District, } The jurors for our lord the King upon their
to wit. } oath present, that J. S. late of the township of —— in the county of —— in the home district, labourer, being a scandalous and evil disposed person, and devising, contriving, and intending, the morals of divers liege subjects of our lord the King, to debauch and corrupt, on the —— day of —— in the —— year of the reign of our sovereign lord William the Fourth, at the township aforesaid, in the county and district aforesaid, on a certain public and common highway there situate, in the presence of divers liege subjects of our said lord the King, and then and there being, and within sight and view of divers other liege subjects, through and on the said highway then and there passing and re-passing, unlawfully, wickedly and scandalously, did expose to the view of the said persons so present and so passing and re-passing as aforesaid, the body and person of him the said J. S. naked and uncovered, for a long space of time, to wit, for the space of one hour, to the great scandal of the said liege subjects of our said lord the King; to the manifest corruption of their morals; in contempt of our said lord the King, and his laws; to the evil example of all others in the like case offending; and against the peace of our lord the King, his crown and dignity.

INDIANS.

By an ordinance of the late province of Quebec, passed in the 17 *G.* 3. *c.* 7. entitled, "an ordinance to prevent the selling of strong liquors to the Indians in the province of Quebec, as also to deter persons from buying their arms or clothing, and for other purposes relative to the trade and commerce with the said Indians"—it is enacted, that no person shall purchase, or receive in pledge, or in exchange, any clothes, blankets, fire arms or ammunition, belonging to any Indian or Indians, under the penalty of £5, and imprisonment not exceeding one month, for the first offence; and of £10, and imprisonment, not exceeding two months, for every subsequent offence; to be recovered by information before one or more commissioners of the peace of the district where the offence shall be committed, upon the oath of one witness, (other than the informer) and to be levied with costs, by warrant to seize and sell the goods and lands of the offenders, provided that such informations shall be brought within six calendar months from the time of the offence.

By imperial statute 43 *G.* 3. *c.* 138. all offences committed within any of the Indian territories, not within the limits of this province, or of the United States, shall be tried in the same manner, and subject to the same punishment, as if the same had been committed within this province.

By 41 *G.* 3. *c.* 8. any person selling or bartering any rum, brandy, whiskey, or other spirituous liquors, within the tract occupied by the Moravian Indians, in the township of Oxford, on the river Thames, in the western district, shall be convicted in the same manner, and subject to the like penalties, as persons selling spirituous liquors without license.

By 4 *G.* 4. *c.* 20. if any person shall buy, or receive from any Indian, or employ any Indian, to catch any salmon, during certain prohibited periods, (viz. between the 10th November and the 1st January) he shall, upon conviction before any two justices, upon the oath of one witness, be subject to the penalties of the 2 *G.* 4. *c.* 10.

By the 4 *G.* 4. *c.* 8. entitled "an act to make permament, and extend the provisions of the laws now in force for the establishment of common schools," &c. the provisions of this act, and of the 56 *G.* 3. *c.* 36. shall extend to the Indians. § 5.

INDICTMENT.

The venue must appear in the margin, and be laid in the district where the offence was committed.

Every indictment must have a precise and sufficient certainty, otherwise, the defendant may demur, move in arrest of judgment, or bring a writ of error. *R. v. Mason*, 2 *T. R.* 581. It should state the facts, circumstances, and intent with which the act is committed, with the time and place, without any repugnancy or uncertainty, and in terms direct and positive. No part of the indictment must contain any abbreviation, or express any number or date in figures. 2 *Hale*, 170. 4 *G.* 2. *c.* 26. 6 *G.* 2. *c.* 6. The only exception is, in cases of forgery, libel, and sending a threatening letter; in either of these cases a fac-simile of the instrument must be set out, with all the figures and abbreviations, as in the original instrument. *R. v. Mason*, 1 *East.* 180. The christian and surname of the defendant must be stated, with his addition, state and degree, and the place where he is known. If it be doubtful which of two names is his real surname, he may be described with an *alias dictus*, as *George Jackson*, otherwise called *George Johnson*. Where the prisoner's name is not known, and he refuses to discover it, he may then be described as a person whose name is to the jurors unknown, but who is personally brought before the jurors by the keeper of the prisoner. *Russ. & Ry.* 489. The addition should be given after the first name, and not after the *alias dictus*. 2 *Inst.* 699.: though this defect is cured by the defendant pleading to the indictment. 1 *Leach*, 420.

In indictments for felony, if the property be stolen out of the possession of a *bailee*, it may be described as the property either of the bailor or bailee. 2 *Hale*, 181.: therefore, goods entrusted to a carrier, a tailor, or a laundress, may be laid as the property of the person to whom they are so entrusted, or of the real owner, at the option of the prosecutor. 2 *Hale*, 181. 1 *Leach*, 356.

Clothes or other necessaries furnished by a father to his child, may be laid to be the property of the father, if the child be of tender age. 2 *East*, *P. C.* 654. But where the child is old enough to acquire property, they must then be laid to be the property of the child. Where the goods are stolen from a married woman, they must be laid to be the property of her husband. The goods of a deceased person must be laid as the property of his executor or administrator. Of a corporation, as the property of the corporation, in their corporate name. 2 *East. P. C.* 1059.

Where the party injured is unknown, or does not come forward, he may be described as 'a certain person to the jurors unknown.' 2 *Hale*, 181.: but if it appear in evidence that his name is known, the defendant will be acquitted. 2 *East. P. C.* 651. 781.

The time stated should be a day certain, that is, the day of the month and year upon which the act is alleged to have been committed: the year of the king's reign is usually stated, but the year

of our Lord is equally good. A mistake in the day and year will not in general vitiate the indictment. 1 *Salk.* 287. But upon some occasions the time is material; as, in the case of murder, when the indictment must lay the time of the death within a year and a day after the mortal stroke. *Fost.* 249. *Bl. Com.* 306. So, in an indictment for bigamy, it is necessary to state, with correctness, the time of the second marriage, and to aver that the first wife was alive at the time: the dates of all written instruments must likewise be truly stated: the place at which the alleged offence was committed must also be stated: but though the place should be laid with certainty in statement, it is not necessary to be laid according to the truth; and a variance in this respect will not be material, provided the place proved be within the district, except where the place stated is matter of local description, as in describing the situation of a house in the case of *burglary* or *arson*.

An indictment for stopping up the king's highway, must shew what particular part was stopped up. *Show.* 389. In larceny of written instruments, it is sufficient to describe them in a general manner, as, 'one bank note for the payment of £5. and of the value of £5.' 2 *East, P. C.* 602. 777. And in an indictment for embezzling *several* bank notes, it is sufficient to describe them as 'nine bank notes, for the payment of divers sums of money, amounting in the whole to £9.' without specifying the amount of each particular note. *R. v. Johnson*, 3 *M. & S.* 589.

With respect to personal chattels, they must be described with certainty, and by the names usually appropriated to them, and the number and value of each species or kind of goods, as, 'one watch of the value of 20*s.* or, one sheep of the price of 20*s.*': if '*twenty wethers and ewes*' were stated, the indictment would be bad for uncertainty, as it should specify how many of each. 2 *Hale*, 182. 183. Where any *live* animal is mentioned in an indictment, and it turns out to have been *dead* when stolen, the defendant must be acquitted. *R. v. Holloway*, 1 *C. & P.* 128. *R. v. Edwards*, *R. & R.* 497. Money is described as so many pieces of the current gold or silver coin, of the value called sovereigns or shillings, as the case may be. A variance in the number of articles, or in their value, is immaterial, if the value proved be sufficient to constitute the offence in law: so, if there be ten different species of goods enumerated, and the prosecutor prove a larceny of any one or more of a sufficient value, it will support the indictment, though he fail in his proof of the rest.

The indictment is bad for uncertainty, if it charge the defendant in the disjunctive with one or the other of two offences—as that he murdered, *or* caused to be murdered; that he forged, *or* caused to be forged. 2 *Haw. c.* 25. § 58. Or if it charge him in the dis-

junctive—as that, being the servant *or* deputy of A. B. he embezzled certain property. 2 *Rd. Rep.* 263.

The indictment must not in any one *count* charge the defendant with having committed two or more offences. But it seems that a defendant may be indicted for the battery of two or more persons in the same count, if committed at the same time. 2 *Burr.* 994.—The court will in general, upon application, quash an indictment for duplicity; but it seems doubtful whether it can be taken advantage of in arrest of judgment, or by writ of error.

Where one part of the indictment is repugnant to another, the whole is void—as when the indictment charges the prisoner with forging a bond, by which J. S. was *bound*, for this fact would be impossible, if the instrument were *forged*. 2 *Haw. c.* 25. § 62.

But in all cases where any fact or circumstance is stated in an indictment, which is not a necessary ingredient in the offence, it may be rejected as surplusage, and need not be proved; and if there be any defect in the mode of stating such matter, it will not vitiate the indictment. 4 *Co.* 41. *a.* 5 *Co.* 121. 6. *R. v. Howarthe.* 3 *Str.* 26.

All indictments for offences at common law must conclude, "against the peace of our said lord the king," [or the late king,] as the case may be; and an indictment for an offence at common law concluding, against the *form of the statute*, would be bad.

Where a statute creates an offence, or makes an offence at common law one of a higher nature—as where a misdemeanor is made felony—the indictment must conclude "against the form of the statute."

Where several persons actually join in th ecommission of the same felony, they may be indicted either *jointly* or *separately*.—2 *Hale*, 173. But where the offence is in its nature several and distinct, each defendant must then be indicted separately.

The consequence of a misjoinder of several defendants is, that application may be made to the court to quash the indictment.—*R. v Kingston.* 8 *East.* 41.

The same defendant, also, ought not to be charged with different felonies, in different counts of an indictment—as a *murder* in one count, and a *simple larceny* in another; or a burglary in the house of A. in one count, and a burglary in the house of B. in another. In the first case, the objection is fatal on arrest of judgment, or in error, because the judgment is different for the two offences. In the last case, if the objection is made before the defendant has pleaded, or the jury are charged, the judge may, in his discretion, quash the indictment; and though it be not made till after the jury are charged, the prosecutor may still be put to his election for which offence he will proceed. But this last misjoinder

is no ground to arrest the judgment, the offence being of the same species, and for which the judgment is precisely the same.

The *same* felony, however, may be charged in different ways in several counts, in order to meet the facts of the case as they may come out in evidence—thus: if it be doubtful whether the house in which a burglary is committed belongs to A. or B. it may be stated in one count to be the house of A. and in another count the house of B.; and the like in an indictment for a larceny of goods, where it is doubtful whose property they are. 2 *B.* & *P.* 508.

In misdemeanors, it is no objection to an indictment, that it contains several charges, provided the judgment is the same. 3 *T. R.* 98. 106. 8 *East.* 46. 2 *Burr.* 984. *R. v. Jones*, 2 *Camp.* 131.

Of the Finding by the Grand Jury.

The names of all the witnesses who are to be examined before the grand jury, should be indorsed on the bill of indictment, and the witnesses must be previously sworn by the officer of the court. The evidence is gone through by the grand jury in the order in which the names of the witnesses appear on the back of the bill; and if a majority of the grand jury, consisting of twelve at the least, agree in thinking there is sufficient evidence to put the defendant on his trial, they endorse on the bill of indictment a '*true bill*'; but if the majority think there is not sufficient evidence, or if the majority (if a number less than twelve) should even think there is, then the words '*no bill*' are endorsed. The bill of indictment is then returned publicly into court, by the foreman of the grand jury; and if the indictment is found, (for it is previously in law only termed a bill) the prisoner is arraigned in due course and put upon his trial.

The grand jury may insist upon the same strictness of proof as is required on the trial, though it is not usual to do so, nor to weigh the evidence with that degree of scrutiny with which it is afterwards sifted by the judge and jury. They are to hear evidence only on behalf of the prosecution; for the finding of an indictment is merely in the nature of an inquiry or accusation, which is afterwards to be tried and determined: and their duty in this respect, is solely to inquire upon their oaths, whether there be sufficient cause to call upon the party to answer it; they are therefore not to try the prisoner, but merely to determine whether the evidence *against* him is of such a nature as to render necessary a more formal investigation into the fact of his innocence or his guilt; but they ought, nevertheless, to be thoroughly persuaded of the truth of the indictment, as far as their evidence goes, and not to rest satisfied merely with remote probabilities, a doctrine, that *Black-*

stone rightly observes, might be applied to very oppressive purposes. 4 *Bl. Com.* 303.

Where there is only one count in the indictment, the grand jury cannot find '*a true bill*' as to part, and '*not a true bill*' as to other part; for they ought to find the whole or nothing. 1 *Haw. c.* 64. § 40. 2 *Id. c.* 25. § 2. But where the indictment contains two counts, as one for a riot, and one for an assault, they may then return a '*true bill*' as to one count, and *ignoramus* as to the other. *R. v. Fieldhouse, Comp.* 335. But where the evidence bears upon all the counts, and the offence is only stated in a *different form*, it is better to find the whole bill, than to elect one count, and ignore the others, since it is possible, that the prosecution upon trial might fail upon the one so elected, and might have succeeded upon one of those ignored. When a bill is thrown out by the grand jury, it cannot again be preferred to the same jury during the same assizes or sessions; but it may be preferred at the next assizes or sessions, if the prosecutor is not prevented by any lapse of time limited for the prosecution. It is improper to prefer two bills at the same time, for the same offence, before the grand jury, that is to say, one bill treating the offence as a felony, and the other as a misdemeanor: but after a bill for felony has been returned '*no bill*' by the grand jury, it would not be improper, if the facts warranted such a course, to prefer another bill before the same grand jury, for a misdemeanor, as for instance, if a bill of indictment be preferred for rape, and *ignored*, another may very properly, and perhaps successfully, be preferred for the misdemeanor, viz., an assault with intent to commit a rape.

Of granting a copy of the Indictment.

In cases of high treason, the prisoner is, by virtue of the 7 *Ann c.* 21. entitled to a copy of the indictment, with a list of the witnesses and jurors, ten days before the trial.

In cases of *felony*, a copy of the indictment is never granted without the permission of the court. *Order of the Judges*, 16 *Car.* 2.

In prosecutions for *misdemeanor* the defendant is entitled to a copy of the record, as a matter of right, without any previous application to the court. 1 *Bl.* 385. *Selw. N. P.* 952. So in the case of a conviction by a magistrate.

INDIGENT DEBTORS.

By the 11 *G.* 4. *c.* 4. it is enacted, that it shall not be lawful for the sheriff, or other officer, to seize in execution the necessary

wearing apparel of the debtor or debtors, or his, her, or their family; nor the bed or bedding in actual use by the family.

INFANT.

An infant (or minor) in law, is any one who is under the age of 21 years. But with respect to criminal offences, the law considers the age of 14 years the age of discretion, and that any one above that age has a sufficient knowledge of right and wrong to be criminally answerable for his actions. An infant under 14, is presumed by law to be incapable of committing a rape. 1 *Hale*, 630. With respect to the competency of an infant to be a witness, the old rule was, that none could be admitted under 9 years of age; but a more reasonable rule has since been adopted; and it is now settled, that their admissibility depends on the understanding of the child, and the notion it has of the danger and impiety of falsehood, and that this must be collected from the child's answers to questions propounded by the court. 1 *East. P. C.* 442. 1 *Hale*, 302.

INFORMATION.

An Information, in its confined sense, is a complaint exhibited before one or more justices of the peace, upon oath or otherwise, which the defendant is summoned to answer, or upon which a warrant issues to apprehend him: in its more enlarged and comprehensive sense, it is an accusation or complaint exhibited against a person for some criminal offence, either against the king or against a private person, which, from its enormity, the public good requires to be immediately restrained; and it differs only from an indictment in this particular, viz: that the latter is an accusation founded on the oath of twelve men, whereas, an information is only an allegation of the officer who exhibits it.

Informations at the suit of the king are filed by the attorney general, ex-officio, and without any previous application to the court for a rule to file the same, and these are properly the king's own suits. But in those at the relation of private persons, the king is only the nominal prosecutor, and none such can be filed without a rule on the person complained of, to shew cause to the contrary; which rule is never granted but upon motion made in open court, and an affidavit of the facts in relation to the charge of complaint.

Compounding informations, on penal statutes, is an offence punishable by 18 *Eliz. c. 5.* which enacts, that any person informing under pretence of any penal law, who shall make any

composition without leave of the court, or take any money or promise from the defendant to excuse him, shall forfeit £10, and shall stand two hours in the pillory, and be disabled in future to sue on any popular or penal statute. 2 *Haw. P. C. c.* 26.

Whenever a statute requires that an information taken by a magistrate shall be in writing, such direction must be complied with, but otherwise it is not absolutely necessary, nor is it required to be on oath, unless the statute enjoins it; but in general it is advisable that the information be taken in writing, and upon oath. As the information is the foundation of all subsequent proceedings, it must set forth the day and year on which it was taken, and place where; the name and style of the justice or justices before whom taken; and finally the charge distinctly, and the time when the offence was committed, if it can be ascertained. If there are several offenders each must be named. 8 *T. R.* 508. *Toone* 403.

If the information forms a complete foundation for the subsequent judgment, no evidence can be received to extend or supply a defective charge, as the defendant can only be convicted of the charge in the information. *Doug.* 232.; therefore the want of regular allegations in an information cannot be supplied by evidence.

In informations before justices, on any penal statute, the defendant need not appear in person, but may entrust his defence to another. 1 *Str.* 15.

An information must contain the charge direct, as specified in the act of parliament, and not merely facts amounting only to a presumption of guilt. 10 *Mod.* 155. But an information taken before magistrates need not be more particular than an information filed in the court of king's bench. *T. R.* 356.

When justices of the peace act uprightly, though they mistake the law, the court will not grant an information against them. 1 *T. R.* 653. But the party will be left to the ordinary remedy by indictment or action; nor for an improper conviction, unless the party complaining make an exculpatory affidavit, denying the charge. 3 *T. R.* 388.

Information will be granted against a justice, as well for granting as for refusing an ale license, improperly. 1 *T. R.* 692. And for convicting a person without a previous summons. *Str.* 677.

A criminal information may be moved for against magistrates, for misconduct in their office, in the second term after offence committed, there being no assize intervening. 13 *E. R.* 270; but the application must be made sufficiently early in the second term to give the defendants an opportunity of shewing cause against it the same term. 13 *E.* 322. And the Court will grant a rule *nisi* for a criminal information against a justice, for malpractices *during the term;* but not for misconduct before the term. 7 *T. R.* 80.

The following is the form of an information, at the suit of an informer, where he is entitled to a portion of the penalty, only; or, as it is usually termed, an—

Information QUI TAM. (ARCHBOLD.)

—— District, } Be it remembered, that on the —— day of ——
to wit. } in the year of our lord —— at —— in the said district, C. D. of —— in the district aforesaid, constable of the said township, who, as well for our sovereign lord the King as for himself, doth prosecute in this behalf, personally cometh before me, [*or us*] —— of his Majesty's justices of the peace for the said district, and as well for our said lord the King as for himself, informeth me, [*or us*] that A. B. late of —— in the district aforesaid, labourer, within the space of [*one year; or whatever time is limited by statute*] now last past, to wit, on the —— day of —— in the year aforesaid, at —— aforesaid, in the district aforesaid, [*here state the facts and circumstances constituting the offence, as defined by the statute creating it*] contrary to the form of the statute in such case made and provided; whereby, and by force of the statute in such case made and provided, the said A. B. hath forfeited, for his said offence, the sum of ——. Wherefore, the said C. D. who sueth as aforesaid, prayeth the consideration of me [*or us*] the said justice, in the premises, and that the said A. B. may be convicted of the offence aforesaid; and that one moiety of the said forfeiture may be adjudged to our said lord the King, and the other moiety thereof to the said C. D. according to the form of the statute in that case made and provided; and that the said A. B. may be summoned to appear before me, [*or us*] and answer the premises, and make his defence thereto.

Exhibited before ——. C. D.

NOTE.—It should be observed, as a general rule, that in all informations for *penalties*, wherein the informer is *interested*, by reason of his being entitled to a part of the penalty, upon conviction, he cannot be a witness. The information, therefore, should not be upon oath; it should be merely subscribed by the informer; and the facts must be proved by other testimony.

INNS AND INN-KEEPERS.

EVERY inn is not an ale-house, nor every ale-house an inn; but if an inn uses common selling of ale, it is then also an ale-house; and if an ale-house lodges and entertains travellers, it is also an inn. 1 *Burn, p.* 22. It was resolved by all the judges, that any person might erect an inn to lodge travellers, without any license or allowance for such erection. *Dalt. c.* 56. *Blackerby*, 170. But if an inn use the trade of an ale-house, as almost all inn-

keepers do, it shall be within the statutes made about ale-houses. *Dalt.* 133.

Any inn-keeper suffering any inhabitant in any city or town, &c. to continue drinking, tippling therein, (except such as be invited by a traveller; and except labourers and handicraftsmen, upon working days, for one hour, at dinner time; and except labourers lodging at such inn; and except for urgent occasions; to be allowed by two justices) shall forfeit 10s. to the poor, upon conviction before one justice, on the oath of one witness. 1 *J. c.* 9. § 2. 1 *C. c.* 4. 21 *J. c.* 7.; to be levied by the constables or churchwardens; and for default of satisfaction in six days, the distress to be appraised and sold; and for want of distress, the offender to be committed to gaol, until the penalty be paid. 1 *J. c.* 9. § 3.; and shall be disabled, for the space of three years, to keep any such ale-house. 21 *J. c.* 7. § 4. And if any person (except as above, 1 *J. c.* 9.) shall continue drinking or tippling in any inn or ale-house, &c. he shall, on conviction before the mayor, or a justice of the peace, on view, confession, or oath of one witness, forfeit for every offence 3s. 4d. to be paid within one week next after such conviction, to the churchwardens, for the use of the poor; and if he shall neglect, it shall be levied by distress; and in default of distress, the court may order the offender to be set in the stocks for the space of four hours. 4 *J. c.* 5. § 4. *c.* 9. 21 *J. c.* 7. 1 *C. c.* 4. And if any ale-house keeper shall be convicted of tippling, he shall moreover, for the space of three years, be disabled to keep any such ale-house. 7 *J. c.* 10. 21 *J. c.* 7. § 4.

Every person who shall be drunk, and be convicted thereof before one justice, on view, confession, or oath of one witness, shall forfeit for the first offence 5s. to be paid within one week after conviction to the churchwardens, for the use of the poor, or levied by distress; and in default, he shall be committed to the stocks for six hours. 4 *J. c.* 2. § 2. 21 *J. c.* 7. § 1. 3.; and after a second conviction, the offender shall be bound, with two sureties, in a £10 recognizance, with condition to be from thenceforth of good behaviour. 4 *J. c.* 5. § 6. 21 *J. c.* 7. § 3. If any ale-house keeper shall be convicted of being drunk, he shall, besides the penalties, be utterly disabled to keep any such ale-house for the space of three years. 7 *J. c.* 10.

Detaining Goods for the Reckoning.

An inn-keeper may detain the person of the guest who eats, or the horse which eats, till payment. *Bac. abr. Inns.* But a horse committed to an inn-keeper, may be detained only for his own meat, and not for the meat of the guest, or of any other horse.

Ib. 1 *Bulst.* 207. An inn-keeper that detains a horse for his meat, cannot use him. *Bac. Abr. Inns.*

Goods of a Guest Stolen out of an Inn.

An inn-keeper is answerable for those things which are stolen within the inn, though not delivered to him to keep, and though he was not acquainted that the guests brought the goods to the inn; for it shall be intended to be through his negligence, or occasioned by the fault of him or his servants. 8 *Co. Caley's case.* So, if he puts a horse to pasture without the direction of his guest, and the horse is stolen, he must make satisfaction; but otherwise, if with his direction. *Ib.* In like manner, if an inn-keeper bids his guest take the key of his chamber and lock the door, and tells him that he will not take charge of the goods, yet if they are stolen, he shall be answerable; because he is charged by law for all things which come to his inn; and he cannot discharge himself by such or the like words. *Dalt. c.* 56. A person is a guest who merely leaves his horse at an inn, as much as if he had staid himself, because the horse must be fed, by which the inn-keeper has gain; otherwise, if he had left a trunk, or a dead thing. 1 *Salk.* 388.

By an ordinance of the province of Quebec, 28 *G.* 3. every person taking out a license for the purpose of retailing wine, &c. shall enter into a bond, with sufficient sureties, to keep an orderly and decent house.

By the 33 *G.* 3. *c.* 13. § 3. the words "*licensed to sell wine and other spirituous liquors,*" shall be written, painted or printed, over the door of such house of entertainment, under the penalty of 5s. § 4. And persons taking out a license, shall enter into a £10 bond to the King, well and truly to keep a decent and orderly house. § 5. And pay 2s. 6d. for the license and 2s. 6d. for the bond.

By the 34 *G.* 3. *c.* 12. § 2. no license shall be granted for an inn or public house, unless the person applying shall first have a certificate of his being a proper person, from the magistrates of the division where he resides, or is about to reside. All licenses otherwise granted, shall be void. Sec. 3. (*Repealed by* 59 *G.* 3. *c.* 2.) Sec. 4. No certificate to obtain such license shall be granted to any person not previously licensed, without a testimonial of good character, under the hands of the parson and church or town wardens, or of four reputable and substantial householders, and inhabitants of the division where the said inn or public house is to be kept; and that he has taken the oath of

allegiance. Sec. 5. Such license may be afterwards assigned, upon the party dying or removing, by an endorsement on the back thereof, executed in the presence of a magistrate; and the assignee, within thirty days after such death or removal, obtaining testimonial as aforesaid, to be produced at the next division meeting, otherwise, at the expiration of such thirty days, license to be void. Sec. 6. Every person obtaining such certificate, shall enter into the recognizance required by the 33 *G.* 3. *c.* 13. to be transmitted to the clerk of the peace of the district, to be filed; and a list of persons under such recognizances, shall be laid before the quarter sessions next ensuing the 5th April, yearly; and upon complaint made of such recognizance being forfeited, by an act of misdemeanor, any one justice may summon the party to appear at the next quarter sessions, and bind over the party making the complaint, and the misdemeanor charged shall be tried by a jury, and if a verdict of guilty be given, the justices shall estreat such recognizance into his Majesty's court of king's bench, and the offender shall be disabled from holding a license for three years.

Form of a Warrant to a Constable, to give Notice.

To the high constable, or other peace officer of this district.
Home District, } In pursuance of the act in such case made and
—— Division. } provided, you are hereby required to give notice, in the most public manner, to all licensed inn-keepers or keepers of public houses, and also to all persons unlicensed, who do intend to offer themselves to be licensed at the next general meeting of the said justices, for that purpose, within this division, that they do personally appear before the said justices, at the —— on the —— at —— hour of the forenoon of the same day, to take or renew their licenses for the year ensuing; and also to give them notice, that every person to be licensed must personally enter into a recognizance of ten pounds, before the clerk of the peace of the district, together with two sureties in five pounds each, that they will not use or suffer any unlawful games, and that they will keep good order and rule within their respective houses; and if he, she or they, shall be hindered, by sickness or other reasonable cause, to be allowed by the said justices, that he, she or they, must procure two sureties, to be then and there bound in the like manner in ten pounds each: and unto such persons as have not been licensed for the year preceding, you are further to give notice, that no license will be granted to any of them, unless every such person shall also, at the same time and place, produce a testimonial, should the same be required by the justices, under the hands of the minister and church or town wardens, or otherwise, of four reputable and sub-

stantial householders of the division, setting forth that he is of good fame and sober life and conversation, and as they believe, a good subject of our lord the king, having taken the oath of allegiance. Hereof fail not. Given under our hands this —— day of —— in the year of our Lord ——.

A. B. } Justices of the peace for
C. D. } the said division.

By 36 *G.* 3. *c.* 3. any person keeping an inn or public house, for the purpose of vending wine, brandy, rum, or other spirituous liquors, without a license, shall forfeit £20. upon being convicted on the oath of one witness, in the manner and form mentioned in the 34 *G.* 3. *c.* 12.

By the 59 *G.* 3. *c.* 2. It is enacted that it shall be lawful for the justices, in general quarter sessions assembled, in each and every district, at their meeting next before the 5th January, in each year, to adjourn the sessions to the last Monday in December, at which adjourned sessions they shall have power to limit the number of inns and public-houses, and hear and receive applications for others; and the said justices shall, upon receiving any such application inquire into the character of the applicant, and if satisfactory, the presiding magistrate shall grant him a certificate under his hand and seal, which certificate shall enable the party to take out a license, on or before the 5th January next ensuing, on payment of the duties imposed by this act. § 4. Upon granting such certificate, the justices shall direct the inspector to take such sum as the justices or a majority of them shall adjudge just and proper, according to the situation of such inn, not exceeding £12 10s., nor less than £2 16s. § 5. Persons desirous of keeping an inn, may apply for such certificate at any time during the year, to the justices of the district in which he resides, in general quarter sessions assembled, and such justices shall inquire into the character of the party, and if expedient to increase the number of inns, the presiding magistrate shall grant a certificate. § 6. At the time of granting such certificates the justices shall frame rules and regulations for inn-keepers, which they shall be bound in recognizance to abide by, and a copy of such rules and regulations, for the information of travellers, shall be fixed in some conspicuous place in every house so licensed. This act was to continue in force *two* years and to the end of the next session; and was revived for *two* years longer by the 11 *G.* 4. *c.* 9. with the exception of that part of the second clause which relates to the adjournment of the sessions to the last Monday in December, and the third clause; and so much of the fourth clause as relates to the license duty. § 2. Every person keeping a shop and tavern,

keepers during the said term, then this recognizance to be void.
Taken and acknowledged before me, }
this —— day of—— 183—. }
S. W.
Clerk of the peace.

Office of the Clerk of the Peace,
Toronto, ——— 183—.

I hereby certify, that —— has entered into recognizance before me, to keep good order in his house, as an inn-keeper in the town —— of—— for the ensuing year.

S. W.
Clerk of the Peace H. D.

To ——
Inspector of licenses, H. D.

Form of an Inn-Keeper's License,

——— District.

Province of } Sir John Colborne, K. C. B. Lieutenant Gover-
Upper Canada. } nor of the province of Upper Canada, &c. &c.

To all whom these presents may concern :—

This license is granted to —— of the town —— of—— in the county of —— and in the —— district, inn-keeper, to keep the house known by the sign of—— within the said town —— as an inn, or other house of public entertainment, and to sell therein by retail, wine, brandy, rum or other spirituous liquors :—this license to be in force until the fifth day of January, one thousand eight hundred and thirty —— and no longer, and provided that the said —— shall, during the continuance of the said license, maintain and keep good order in the said inn or house, and duly observe all such rules, regulations, matters and things, respecting inns or other houses of public entertainment, as by any act or acts made, or to be made, by the parliament of this province, are, or shall be enacted and declared. Given under my hand, at Toronto, in the county of York, this —— day of—— one thousand eight hundred and thirty —— in the —— year of his Majesty's reign.

By his Excellency's command.

A. B.
Inspector General.

Received from the said —— the sum of —— lawful money of the province, being the duties payable on the same.

Assignment of an Inn-Keeper's License by Indorsement.

I, the within named —— do hereby assign all my interest in the within license, and all benefit and advantage accruing or to ac-

crue, under or by virtue thereof, unto —— his executors, administrators and assigns, for all the remainder now to come of my term and interest, therein subject, nevertheless, to such terms and conditions as are mentioned and expressed in the said license. Witness my hand, at —— the —— day of —— 183—.

Information for forfeiture of Recognizance.

Home District, } The information and complaint of A. B. of the
to wit. } township of —— in the said district, yeoman, taken on oath this —— day of —— 183—, before J. P. esq. one of his Majesty's justices of the peace for the said district:— the said informant saith, that for some time past there have been frequent disturbances at the tavern kept by —— situate —— in the said district, and in particular on the —— day of —— last, when two persons of the names of —— commenced a fight, in the presence of the said ——, and several other persons, in the bar-room of the said tavern, about twelve o'clock, at noon, the same day, and that the said —— permitted the said fight to go on in the said bar-room for a long time without forbidding the same, or taking measures to suppress the same; and again on the —— day of —— at the hour of ——, at night, another fight &c. [*as the case may be*] and this informant further saith that from the above circumstances, and other matters which he hath been informed of, and believes, he hath good reason to suspect, and doth verily suspect, that the said tavern is not kept by the said —— in a decent and orderly manner, but otherwise, to the great annoyance and disturbance of many of his Majesty's subjects; and therefore he prayeth that the said —— may be summoned according to law.

Recognizance to Prosecute.

A. B. of the township of —— in the home district, yeoman, acknowledges, &c. [*in the usual form, the amount being at the discretion of the justice.*] Whereas the said A. B. hath this day made oath before me, J. P. esq. one of his Majesty's justices of the peace for the said district, that &c. [*here recite the particulars charged in the information,*] Now the condition of this recognizance is such, that if the said A. B. shall and do personally appear at the next general sessions of the peace to be holden at the city of Toronto, in and for the said district, and then and there prosecute and give evidence, before the court and jury sworn to inquire upon a charge, to be then and there preferred by him the said A. B. against the said C. D. for not keeping a decent and orderly house, at the tavern and premises aforesaid, and shall not

depart the court without leave, then this recognizance to be void, otherwise, in full force. Taken, &c.

Condition of the Recognizance by a Witness.

The condition of the above recognizance is such, that if the above bounden G. H. shall and do personally appear &c. [*as before*] and then and there give evidence upon a charge to be then and there preferred by A. B. of —— against C. D. of —— innkeeper, for not keeping a decent and orderly house, at the tavern and premises kept by him, situate in the said township, and not depart the court without leave, then this recognizance to be void, otherwise, in full force.

Summons to the Inn-Keeper.

Home District, } To the Constable of —— in the said district.
to wit. } Whereas C. D. of —— in the said district, innkeeper, hath this day been charged before me, J. P. esq. one of his Majesty's justices of the peace for the district aforesaid, on the oath of a credible witness, with not keeping a decent and orderly house, at the tavern and premises kept by him the said C. D. at —— in the district aforesaid. These are therefore to require you, the said constable, forthwith to summon the said C. D. to appear at the next general quarter sessions of the peace, to be held at the city of Toronto, in and for the home district, and then and there answer to the aforesaid charge, to be then and there preferred against him, and tried by a jury, according to the statute in such case made and provided, and to be further dealt with according to law; and be you then there to certify the court what you shall have done in the premises. Herein fail you not. Given under my hand and seal, &c.

(A copy of the above should be served upon the defendant.) ——

Information for Drunkenness, on the 4 *J. c.* 5. *and* 21 *J. c.* 7.

Home District, } The information of A. J. of —— in the said
} district, yeoman, taken on oath before me, J. P. esq. one of his Majesty's justices of the peace for the said district, the —— day of —— in the year ——. The said informant saith, that A. O. of —— in the district aforesaid, labourer, on the —— day of —— in the year aforesaid, at —— in the district aforesaid, was drunk, contrary to the statutes in such case made and provided; and thereupon he the said A. J. prayeth, that he the said A. O. may be convicted in the sum of five shillings, according to the said statutes.

Sworn &c.

Summons thereupon.

Home District, } To the Constable of ——
} For as much as information upon oath hath been made before me, J. P. esquire, one of his Majesty's justices of the peace for the said district, that A. O. of —— in the district aforesaid, labourer, on the —— day of —— in the year —— at the township of —— in the district aforesaid, was drunk, contrary to the statutes in such case made and provided: These are therefore to require you to summon the said A. O. to appear before me, at —— in the said district, on —— the —— day of —— to answer unto the said information, and to shew cause why the penalty of five shillings should not be levied on the goods of him the said A. O. for the said offence; and be you then there to certify what you shall have done in the premises. Given under my hand and seal, the —— day of —— in the year ——

NOTE.—The justice may convict upon his own view, without any information or summons.

Warrant to the Church-Wardens, to receive the Penalty, (if they are not present at the Conviction, or the Offender makes default by not appearing.) (BURN.)

Home District, } To the Church-Wardens of ——
} For as much as A. O. of —— in the said district, labourer, is convicted before me, J. P. esq. one of his Majesty's justices of the peace for the said district, for that he the said A. O. on the —— day of —— in the year —— at the township of —— in the district aforesaid, was drunk, contrary to the statutes in such case made and provided, whereby he hath forfeited the sum of five shillings, to be disposed of according to law: These are therefore to require you to demand and receive of and from him the said A. O. the said sum of five shillings, to be by you accounted for, in manner aforesaid; and if he shall refuse or neglect to pay the same, by the space of one week after such demand made, that then you certify to me such refusal and neglect, to the end that such proceedings may be had thereupon as to justice doth appertain. Given under my hand and seal, the —— day of —— in the year ——.

Warrant to levy the Penalty on Non-payment. 4 *J. c.* 5. *and* 21 *J. c.* 7. (BURN.)

Home District, } To the Constable of —— in the said district.
} Whereas A. O. of —— in the district aforesaid, was on the —— day of —— convicted before me —— one of his Majesty's justices of the peace for the said district, for that he the

said A. O. was on the —— day of —— drunk, at —— aforesaid, in the district aforesaid, by which he hath forfeited the sum of 5*s*. And whereas, I, the said —— did issue my warrant, on the —— day of —— to the church-wardens of the —— of —— aforesaid, to demand and receive the said sum of 5*s*. of and from the said A. O.: and whereas, it duly appears to me, as well on the oath of C. W. church-warden of the —— aforesaid, as otherwise, that they the said church-wardens did, on the —— day of —— demand the said sum of 5*s*. of and from the said A. O. but that he the said A. O. hath neglected to pay the same, as aforesaid, and that the same is not yet paid: These are therefore to command you, forthwith to levy the said sum, by distraining the goods of him the said A. O. and if within the space of *(six)* days, next after such distress by you taken, the said sum, together with reasonable charges for taking and keeping the said distress, shall not be paid, that then you do sell the said goods so by you distrained, as aforesaid, and out of the money arising from such sale, that you do pay the said sum of 5*s*. to the church-wardens of the said —— to be disposed of according to law, rendering to him the said A. O. the overplus, upon demand, the necessary charges of taking, keeping, and selling the said distress, being first deducted; and if the said A. O. be not able to pay the said sum of 5*s*. and sufficient distress cannot be found whereof to levy the said sum, that you certify the same to me, with the return to this warrant. Given under my hand and seal, this —— day of ——

Certificate by the Constable of Warrant of Distress. (Burn.)

Home District, } A. C. Constable of —— in the said district,
} maketh oath, this —— day of —— in the year —— before me, the justice within mentioned, that he hath made diligent search for, but doth not know of, nor can find any goods of the within mentioned A. O. whereof to levy the within sum of five shillings. A. C.

Before me, J. P.

Commitment to the Stocks, for default of Distress, on 4 *J. c.* 5. *and* 21 *J. c.* 7. (Burn.)

Home District.—To the constable of —— in the said district.

Whereas A. O. of —— in the said district, labourer, was on the —— day of —— convicted before me —— one of his Majesty's justices of the peace for the said district, for that he the said A. O. was on the —— day of —— drunk at —— aforesaid, in the district aforesaid, whereby he hath forfeited the sum of 5*s*.:

And whereas it duly appears to me that the said A. O. is not able to pay the said sum of 5s.: These are therefore to require you, in his Majesty's name, to set him the said A. O. in the stocks, there to remain for the space of six hours.

Given under my hand and seal, the —— day of ——.

INSOLVENT DEBTORS.

By the 45 *G.* 3. *c.* 7. Any prisoner in execution for debt, may apply to the court whence such execution issued, and make oath that he is not worth £5. and the court shall order the plaintiff, by rule, to be served on the plaintiff or the attorney, to pay such defendant in execution 5*s.* weekly maintenance, so long as he shall be detained in prison, at the suit of such plaintiff, to be paid in advance, to the prisoner or gaoler, on Monday in every week, on failure of which the defendant shall be released: such payment not to be made if the plaintiff can prove to the court that defendant has secreted or conveyed away his effects, to defraud his creditors.

By 2 *G.* 4. *c.* 8. Plaintiffs may tender interrogatories to debtors in execution, claiming weekly allowance, touching their insolvency, and their answer may be sworn before commissioners for taking affidavits. § 2. Debtor shall receive no benefit from any order for a weekly allowance, until he has answered the interrogatories.

By 8 *G.* 4. *c.* 8. The court, in term time, or a judge in vacation, may order prisoners to be discharged, on non-payment of their weekly allowance, such discharge not to operate as a release of the debt.

INSPECTORS OF DISTRICTS.

By the 43 *G.* 3. *c.* 9. the lieutenant governor is authorised to appoint (during pleasure) an inspector in every district, who shall superintend, collect and account for, (as hereinafter provided.)—His Majesty's revenue arising from licenses to sell by retail, wine and spirituous liquors, or to use and employ stills for the distillation of spirituous liquors. § 3. In all cases, not otherwise provided for by this act, persons desirous of obtaining a license shall apply to the inspector. § 4. And it shall be the duty of the inspector to ascertain persons selling wine or spirits, or using stills without license, or larger stills than those licensed, and proceed against the offenders. § 6. Inspector to be allowed £10. per cent. on monies collected and paid by him to the receiver general. § 7. The inspector, before entering upon his office, shall take and subscribe the following oath, before any two justices of the dis-

trict, who are directed to transmit a certificate thereof to the lieutenant governor.

'I, A. B. do swear on the holy evangelists of Almighty God, that I will well and truly execute, do and perform, the duty of inspector of his Majesty's revenue, arising from shop, tavern and still licenses, and will duly and impartially superintend the collection thereof, according to the best of my skill and knowledge; and in all cases of fraud, or suspicion of fraud, that shall come to my knowledge, I will spare no person from favor or affection, nor will I aggrieve any person from hatred or ill-will, and that I will in all cases faithfully do, execute and perform, to the best of my skill and knowledge, all and every the duties imposed upon me by an act passed in the provincial parliament, in the forty-third year of his Majesty's reign, intituled, "an act for the better securing to his Majesty, his heirs and successors, the due collection and receipt of certain duties therein mentioned."

And no inspector shall enter upon his office until he shall have given security by two sureties in £250. each, and himself in £500. to the king, for the due performance of his office. § 8. The following fees are authorised to be taken by the district inspector:—

	s.	d.
For filing every requisition for a still license,.....	1	3
For issuing the license,.....	2	6
For filing the certificate of the magistrates and clerk of the peace, to the person requiring tavern license,	1	3
For issuing the license,.....	2	6
For issuing shop licenses,.....	2	6

The above act is made perpetual by the 48 *G.* 3. *c.* 8.

By the 44 *G.* 3. *c.* 7. The executor, &c. devisee or purchaser of any person licensed to work a still, may, within twenty days, give notice to the inspector, and make a requisition for a license for the remainder of the term, the purchaser producing his receipt for the purchase money. § 3. After such notice the inspector may endorse the notice, as follows:—

A. B. is hereby licensed to work the within mentioned still or stills, for the remainder of the term by this license first granted.

C. D. *Inspector for the district of* ——

Sec. 4. Inspectors may at all times of the day, when the stills are not charged, upon giving six hours notice, enter into any still house, and measure such stills, under a penalty of £25. by the person refusing, to be recovered as therein mentioned. See further on this subject, title '*Stills.*'

By 50 *G.* 3. *c.* 6. The inspector is authorised to grant licenses for billiard tables, (see title '*Billiard Tables*') such licenses to be

dated on the 29th September, and to expire on the 28th September following; the person requiring such license paying 5*s.* upon application, and 5*s.* upon issuing such license. § 5. All monies received by the inspector, under this act, (except what he shall be entitled to receive for his own benefit) shall be paid to the receiver general, on or before the 31st December.

By the 56 *G.* 3. *c.* 3. Inspectors of districts are required to render, within one month after the 5th of January in each year, (during this act) to the inspector general, an account upon oath, of all monies which he shall have received, under any act of parliament, and shall pay the amount to such receiver general, within two months afterwards. § 3. And shall also transmit quarterly accounts to inspector general, upon oath, of all monies by him received, and within one month afterwards pay the amount to the receiver general. § 4. He is also required to furnish quarterly, on the first day of the general quarter sessions, to the clerk of the peace, an accurate list of all still, shop and tavern licenses, issued the preceding quarter. § 6. And every inspector neglecting to transmit such account, or pay over the monies to the receiver general, as required by this act, shall, for every neglect forfeit £100. to be recovered by any one that will sue in the king's bench, by action of debt &c., one moiety of which shall be paid to the informer, and the other to the use of the province.

By the 59 *G.* 3. *c.* 2. Inspectors are required, upon the production of a certificate, signed by the chairman of the general quarter sessions, to grant the party a tavern license, on receiving payment of the duty on such license.

By the 59 *G.* 3. *c.* 6. § 5. Inspectors are not to charge any additional fee for issuing any license under the provisions of that act, nor retain more than five per cent. upon the duties thereby directed to be paid: and by the 4 *G.* 4. *c.* 13. § 10. Inspectors of districts are not to receive more than £100. per annum, as per centage, under that or any other act.

INSPECTOR GENERAL.

By the 56 *G.* 3. *c.* 3. § 2. Every inspector in the province is required, within one month after the 5th of January in every year, during this act, to render a just account of monies received, and pay such monies to the receiver general within two months afterwards. § 5. And the clerk of the peace in each district, on the 1st May and 20th of February in each year, shall transmit to the inspector general a certified copy of all still, shop, and tavern licenses issued.

By 59 *G.* 3. *c.* 2. § 7. The clerk of the peace shall transmit to the inspector general, quarterly, accounts of all duties on licences ordered by the sessions.

JURISDICTION.

By 59 *G.* 3. *c.* 10. It is enacted, that all crimes and offences committed in any tract of country, or parts of this province, not being within the limits of any described county or township, may be inquired of, and tried within any district of this province, and may and shall be laid and charged to have been committed within the jurisdiction of the court which shall try the same; and such court may proceed to trial, judgment and execution, or other punishment, as if such crime had been committed within the district. § 2. When such parts of the province shall be formed into counties or townships, such offences then shall be tried in the district in which such county or township shall be comprehended.

JURY.

By stat. 14 *G.* 3. *c.* 83. § 11. Which was passed in 1774, and while this province formed a part of the province of Quebec, it was enacted, that the criminal law of England should continue to be administered and observed as law in the province of Quebec, both in regard to the offence as well as the method of prosecution and trial; and subsequently by a statute of the province of U. C. the 40 *G.* 3. *c.* 1. the criminal law of England as it stood on the 17th Sept. 1792, was also declared to be the criminal law of this province, but without affecting the provisions of the above statute of the 14 *G.* 3. *c.* 83. By the 32 *G.* 3. *c.* 2. the trial by jury is also directed to be used in all civil causes.

Sir W. Blackstone says, the trial by jury, or the country *per-patriam* is also that trial by the peers of every Englishman, which as the grand bulwark of his liberties is secured to him by the great charter. *Bl. Com. vol.* 4. *p.* 349. And again, that the founders of the English law, have with excellent forecast, contrived that no man should be called to answer to the King for any capital crime, unless upon the preparatory accusation of twelve or more of his fellow subjects, the *grand jury*, and that the truth of every accusation, whether preferred in the shape of indictment, information or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbours, indifferently chosen and superior to all suspicion. *Ib.*

Acts for the Regulation of Juries.

By stat. 34. *G.* 3. *c.* 1. It is enacted, that the clerk of the peace of each district shall, yearly, (under the penalty of £5) make up,

from the assessors' returns, a list of inhabitant house-holders to be transmitted or delivered to the sheriff; and every person returned in such list shall be qualified to serve on juries; and no sheriff or coroner shall return any other person, or any juror whose name shall not appear in such list. § 2. Sheriff's bailiffs shall not summon any person to serve on juries at the sessions or assizes who shall have served within *one year* before, under the penalty of £10. § 3. The sheriff shall keep a register of jurors on all trials, and grant certificates of service, if required, without fee or reward. Sec. 4. No reward shall be taken for excusing any persons from serving on juries, and no juror shall be summoned whose name is not specified in the sheriff's mandate, and if any sheriff or bailiff shall transgress herein, he shall be fined in the discretion of the court of assize. Sec. 5. The sheriff shall upon his return of every writ of *venire facias*, annex a panel of not less than 36 jurors, nor more than 48. Sec. 6. The name of every juror shall be written on distinct pieces of parchment or paper, and shall be delivered to the marshal, and when a cause shall be called on, he shall in open court, draw out the jurors names successively until twelve shall be drawn and allowed, and being sworn, the same shall be the jury to try the cause, and shall be kept apart till they have given their verdict: their names shall be again returned to the glass, to be re-drawn, until all the causes are disposed of. Sec. 7. Any juror not appearing after having been three times called, shall pay a fine not exceeding £3. nor less than 20*s*. unless reasonable cause be shown. Sec. 8. Persons sixty years of age shall be exempt from serving on juries.

By the 36 *G*. 3. *c*. 2. The sheriffs of the eastern, midland, and western districts, before the first day of the term next preceding the assizes, shall return a pannel of not less than 36, nor more than 48 jurors, into the court of king's bench, without a *venire facias* for that purpose. Sec. 2. The sheriff of the home district shall make the like return, on or before the first day of every term.

Special Juries.

By the 48 *G*. 3. *c*. 13. A special jury may be obtained for the trial of any indictment, information, action, suit or cause, without any motion in court. Sec. 3. The clerk of the peace shall, annually, on or before the 15th of July, deliver to the sheriff a list of persons assessed £200. and upwards, and shall be entitled to a fee of 5*s*. by an order in sessions on the district treasurer. Sec. 4. Four days notice shall be given by the prosecutor of any indictment, &c. or the defendant, to the opposite party, to appear at the sheriff's office. Sec. 5. When 40 names of the persons so assessed shall be drawn by the sheriff or his deputy, or an indifferent per-

son, and each party may strike out the names of twelve, and the remaining sixteen shall be summoned as special jurors on the trial. Sec. 6. Upon the neglect of either party to attend, the sheriff or his deputy, in behalf of such party, may strike out twelve names. Sec. 7. Special jurors shall be entitled to receive *5s.* each. Sec. 8. And the person applying for a special jury shall pay the fees for striking such jury, and all expenses occasioned by the trial, and upon taxation, shall only be allowed the costs of a common jury, unless the judge shall certify that the same was a proper cause for a special jury.

By the 2 *G.* 4. *c.* 1. § 30. Every common juror shall be allowed 1*s.* 3*d.* in every cause in which he shall be sworn, to be paid by the plaintiff or his attorney.

The mode of summoning Juries at the Sessions.

By a clause in the commission of the peace, the sheriff is commanded, that at certain days and places, which the justices, or any two or more of them, shall make known, that he cause to come before them such and so many good and lawful men of his district, by whom the truth of the matter in the premises shall be the better known and inquired into.—(See post for the form of precept of two justices, for summoning the jury at the sessions.) The general precept, that issues before a session, is to return twenty-four; and commonly, the sheriff returns upon that precept forty-eight. 2 *H. H.* 263. Upon the grand jury, there may be, and usually are, more than twelve; but if there be twelve assenting, though others dissent, it is not necessary for the rest to agree. 2 *H. H.* 161. But upon a trial by a petit jury, it can be by no more, nor less, than twelve, and all assenting to the verdict. 2 *H. H.* 161. Every summons of jurors shall be made by the sheriff, his officer, or lawful deputy, six days before, at the least, shewing to every person so summoned, the warrant, under the seal of the office wherein they are appointed to serve; and if such juror be absent from the place of his habitation, notice of the summons shall be given, by leaving a note in writing, under the hand of such officer, containing the contents thereof, at the dwelling-house of such juror, with some person there inhabiting the same. 7 & 8 *W. c.* 32. § 5. And if the sheriff, his deputy or bailiff, neglect their duty herein, or excuse any person, for favour or reward, he shall forfeit £20, to him who shall sue. 7 & 8 *W. c.* 32. § 6.; or he may be fined £10, or under, by the judge of assize. 3 *G.* 2. *c.* 25. § 6. And no bailiff, or other officer, shall summon any person other than such whose name is specified in a mandate signed by the sheriff, or under-sheriff, and to him directed, on pain of £10. 3 *G.* 2. *c.* 25. § 6.

Of Challenges.

Challenges are of two kinds, viz.—either to the *array*, which must be in writing; or to the *polls*, which may be verbal, and may be made either on the part of the King, (i. e. the prosecutor) or of the prisoner. 4 *Bl. Com.* 352. A challenge to the array, is an exception to the whole panel in which the jury are arrayed. There are two descriptions of causes of challenge to the array, viz.: *principal causes* of challenge, and causes of challenge to *favor*. The following are principal causes of challenge to the array, viz:—If the sheriff, or other officer, be of kindred to the plaintiff or defendant; if any one or more of the jury be returned at the nomination of either party; if the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party; so, if either party have an action of debt against the sheriff; but otherwise, if the sheriff have an action of debt against either party; or if the sheriff have parcel of the land depending upon the same title; or if the sheriff, or his bailiff which returned the jury, be under the distress of either party; or if he be counsel, attorney, officer or servant, of either party; gossip, or arbitrator in the same matter, and treated thereof. 1 *Inst.* 156. A challenge to the *array* for favour, arises from matter fit to be left to the conscience and discretion of the triers, under the particular circumstances of each individual case. Thus, it is said, that if one of the jurors returned be a tenant to the sheriff; or if there be a family connection between one of the jurors and the sheriff, this may be ground of challenge to the array for favor: that is, matter to be left to the triers to decide whether it indicates such partiality as should avoid the array. 3 *Bl. Com.* 359.

Challenges to the *polls* are challenges of individual jurymen, and are either peremptory or for cause; peremptory challenges are at the mere will of the party, without any reason given. *Co. Lit.* 156. In cases of treason or felony, the prisoner by the common law might peremptorily challenge 35, but by *stat.* 22. *H.* 8. *c.* 14. Sec. 6. the number was reduced to 20, in petit treason, murder and felony; and in case of high treason and misprision of treason, it was taken away by *stat.* 33. *H.* 8. *c.* 23. but revived by *stat.* 1. & 2. *P.* & *M. c.* 10.

By the 3. *W.* 4. *c.* 4. every peremptory challenge by any person indicted for treason or felony, beyond the number by law allowed shall be void, and the trial may proceed as if no such challenge had been made. In cases of *misdemeanor* there is no right to peremptory challenge, but it is usual for the officer to abstain

from calling any reasonable number of names objected to by either party, taking care to leave enough to form a jury. *Dickenson Q. S. p.* 314.

A challenge to the *polls*, or of individual jurymen, is like a challenge to the array, a principal challenge, or a challenge to the favor. The grounds of principal challenge are—1. The rank of the party, as being a peer of the realm. 2. For some personal incapacity, as if a juryman be an alien or a minor. 3. On account of some palpable ground of bias, as if the juror be of the blood or kindred of either party; or under his power or influence; as tenant or servant; or of counsel with him; 4 *Bl. Com.* 361. Or if he has declared his opinion beforehand; *Haw. b.* 2. *c.* 43. § 29. Or has indicted the party for the same cause; *Lamb.* 554. Or been upon a former jury upon the same matter, though between other persons; or arbitrator unless indifferently chosen by either party; or action pending between the juror and either of the parties; or bribing a juror. 1 *Inst.* 157. 4. On account of some crime or misdemeanor affecting the jurors' character, as a conviction of treason, felony or perjury; or if he be outlawed; or hath been attainted of false verdict; præmunire; or forgery: but it seems that none of the above cited challenges are principal ones, but only to the favor, unless the record of the outlawry, judgment or conviction, be produced, if it be a record of another court; or the term be shown, if it be a record of the same court. 3 *Bl. Com.* 363.

As to challenges for suspicion of favor, although a juror has not given apparent marks of partiality, yet there may be sufficient reason to suspect he may be more favorable to one side than the other, and this is his reason for a challenge to the favor. The causes of favor are infinite, and in these inducements to suspicion of favor, the question is, 'whether the juryman be indifferent as he stands unsworn,' for a juryman ought to be perfectly impartial to either side. *Co. Lit.* 157. (b).

As the challenge to the *array* must be before any of the jury are sworn; so challenge to the *polls*, must be before the particular jurors are sworn. *Bull. N. P.* 307. After a challenge to the array, the party may challenge the polls; but after a challenge to the polls there can be no challenge to the array; and he who has more than one cause of challenge against a juror, must take them all at once: but if he challenge a juror, and the cause be found insufficient, he may, nevertheless, afterwards challenge him peremptorily, for perhaps the very challenge may create a prejudice in the mind of the juror so challenged. 3 *Bl. Com.* 363.

A principal cause of challenge being grounded on a manifest presumption of partiality, if it be found true, it unquestionably sets aside the array without any other trial than its being made

out to the satisfaction of the court before which the name is returned. But a challenge to the favour, when the partiality is not apparent, must be left to the discretion of the triers. *Co. Lit.* 158. *(a.)* If the array be challenged, it lies in the discretion of the court to determine *how* it shall be tried;—sometimes it is done by two attornies; sometimes by two coroners; and sometimes by two of the jury; with this difference—that if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned: if the challenge be on account of partiality—then by any other two assigned thereunto by the court. 2 *Hale*, 275. When a challenge is made to the array, for favour, the prosecutor may either confess it or plead to it;—if he plead, the judges assign triers to try the array, who seldom exceed two; who being chosen and sworn, the clerk of the peace declares to them the challenge, and concludes to them thus—"*and so your charge is, to inquire whether it be an impartial array or a favourable one*"; and if they affirm it, the clerk enters underneath the challenge, "*affirmatur*"; but if the triers find it favourable, then thus—"*calumnia vera*," or words to that effect.

As to challenges to the polls,—if a juror be challenged before any juror be sworn, two triers are appointed by the court; and if he be found indifferent, and sworn, he and the two triers shall try the next challenge; and if he be tried, and found indifferent, then the two first triers shall be discharged; and the two jurors tried, and found indifferent, shall try the rest. But if the prosecutor challenge ten, and the prisoner one, and the twelfth be sworn, then he that remains shall have added to him one chosen by the prosecutor, and another by the prisoner, and they three shall try the challenge; and if six be sworn, and the rest challenged, the court may assign any two of the six sworn, to try the challenges. 2 *Hale*, 275. The truth of the matter alleged, as cause of challenge, must be made out by witnesses to the satisfaction of the triers; also, the juror challenged, may on a *voir dire*, be asked such questions as do not tend to his disgrace; but a juror may not be asked any questions as tend to discover matters of infamy or shame. *Salk.* 183. nor may a juror be asked whether he has expressed an opinion hostile to the party challenging. *R. v. Edmonds*, 4. *B. & A.* 471.

JUSTICES OF THE PEACE.

THE King's Majesty is, by his office and dignity royal, the principal conservator of the peace within all his dominions; and may give authority to any other to see the peace kept, and to punish such as break it; hence it is usually called the King's peace.

Justices of the peace are appointed by the king's special commission under the great seal, which appoints them all jointly and separately to keep the peace, and any two or more of them to inquire of and determine felonies and other misdemeanors. When any justice intends to act under this commission he sues out a writ of *dedimus potestatem* from the clerk of the crown in chancery, empowering certain persons therein named to administer the usual oaths to him; which done, he is at liberty to act. 1 *Bl. Com. p.* 349; 351. And every justice, (except as therein excepted) shall have £100 per annum, clear of all deductions; and if he acts without such qualification he shall forfeit £100. 5 *G.* 2. *c.* 18. He must also take and subscribe an oath that he is duly qualified, besides the oath of office and the oaths of allegiance and supremacy. 18 *G.* 2 *c.* 20. § 1. These latter oaths, however, are now dispensed with by the 3 *W.* 4. *c.* 13. and another form of oath substituted, which will be found under the title "Oaths of office." see post.

Form of the Commission of the Peace.

William the Fourth by the grace of God of the united kingdom of Great Britain and Ireland, king, defender of the faith, &c.

To —— [*the names of the justices being here inserted,*] esquires, *greeting*: KNOW YE, that we have assigned you, jointly and severally, and every one of you, our justices to keep the peace in our Home district, and to keep, and cause to be kept, all ordinances and statutes for the good of the peace, and for the preservation of the same, and for the quiet rule and government of our people, made in all and singular their articles in our said home district, according to the force, form, and effect of the same; and to chastise and punish all persons that offend against the form of those ordinances and statutes; and to cause to come before you, or any one of you, all those who to any one or more of our people concerning their bodies, or the firing of their houses, have used threats, to find security for the peace or their good behaviour towards us and our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept. We have also assigned you, and every two or more of you, our justices, to inquire more fully the truth, by the oaths of good and lawful men of the district aforesaid, by whom the truth of the matter may be the better known, of all and all manner of felonies, poisonings, trespasses, forestallings, regratings, engrossings and extortions whatsoever; and of all and singular the crimes and offences of which the justices of the peace may and ought lawfully to inquire, by whomsoever, and after what manner soever, in the said district, had done or perpetrated, or which hereafter shall there happen to be done or attempted. And also, of all

those who, in the aforesaid district, in companies, against our peace in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride. And also, of all those who shall there have lain in wait, or hereafter shall presume to lie in wait, to maim, or cut, or kill our people. And also, of all victuallers, and all and singular other persons who, in the abuse of weights and measures, or in selling victuals, against the form of the ordinances and statutes, or any one of them, therefor made for the common benefit of our province of Upper Canada, and our people thereof, have offended or attempted, or hereafter shall presume, in our said district, to offend or attempt. And also, of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who, in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or hereafter shall happen to be, careless, remiss or negligent, in our said district; and of all and singular articles and circumstances, and all other things whatsoever that concern the premises, or any of them, by whomsoever, and after what manner soever, in our aforesaid district, done or pepetrated, or which shall hereafter happen to be done or attempted in what manner soever. And to inspect all indictments whatsoever before you or any of you taken or to be taken, or before others late our justices of the peace in our aforesaid district made or taken and not yet determined; and to make and continue process thereupon against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed. And to hear and determine all and singular the felonies, poisonings, trespasses, forestallings, regratings, engrossings, extortions, unlawful assemblies and indictments, aforesaid; and all and singular other the premises according to the laws and statutes of our said province of Upper Canada, or form of the ordinances and statutes aforesaid, it has been accustomed or ought to be done to chastise and punish. *Provided always*, that if a case of difficulty upon a determination of any of the premises before you, or any two or more of you, should happen to arise, then let judgment in nowise be given before you or any two or more of you, unless in the presence of one of our justices of our court of our bench, or one of our justices appointed to hold the assizes in the said district; and therefore we command you, and every of you, that to keeping the peace, ordinances and statutes, and all and singular other the premises, you diligently apply yourselves, and that at certain days and places which you, or any such two or more of you as is aforesaid, shall appoint for the purposes, into the premises you make inquiries, and all and singular the premises you hear and deter-

mine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains according to the law and custom of Upper Canada: saving to us our amerciaments and other things to us thereupon belonging. And we command, by the tenor of these presents, our sheriff of our said district that at certain days and places, which you, or any such two or more of you, shall make known unto him, he cause to come before you, or any such two or more of you as is aforesaid, such and so many good and lawful men of his district, by whom the truth of the matter in the premises shall be the better known and inquired into.

In testimony, &c.

The commission is determinable, 1. By the demise of the crown, that is (*by the* 1. *Ann*, *c.* 8.) in 6 months afterwards. 2. By express writ under the great seal. *Lamb.* 67. 3. By writ of *supersedeas*, but this does not totally destroy it, as it may be revived again by another writ, called a *procedendo*. 4. By a new commission, which virtually, though silently, discharges all the former justices that are not included in it, for two commissions cannot subsist at once: and lastly, (by 1 *Mar. Sess.* 2. *c.* 8.) by accession to the office of sheriff; and according to some opinions, also, by succeeding to the office of coroner. *Dalt. c.* 3. *Bl. Com.* 16. *Ed.* 353.

Oath of Office. (Burn, Toone, &c.)

Ye shall swear, that as justices of the peace, in the home district, in all articles in the King's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit and power, and after the laws and customs of the province of Upper Canada, and statutes thereof made; and ye shall not be of counsel of any quarrel hanging before you; and that ye hold your sessions after the form of the statutes thereof made; and the issues, fines and amerciaments, that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entered without any concealment, (or embezzling) and truly send them to the King's exchequer; ye shall not let, for gift or other cause, but well and truly ye shall do your office of justice of the peace in that behalf; and that you take nothing for your office of justice of the peace to be done, but of the King, and fees accustomed, and costs limited by statute; and ye shall not direct, nor cause to be directed, any warrant (by you to be made) to the parties, but ye shall direct them to the bailiffs of the said district, or other the King's officers or ministers, or other indifferent persons, to do execution thereof.—So help you God.

Oath of Qualification. (Burn, Toone, &c.)

I, A. B. do swear, that I truly and *bona fide* have such an estate, in law or equity, to and for my own use and benefit, consisting of [*state the nature of the estate*]—as doth qualify me to act as a justice of the peace for the home district, according to the true intent and meaning of an act of parliament made in the eighteenth year of the reign of his Majesty King George the second, entitled, "an act to amend, and render more effectual, an act passed in the fifth year of his late Majesty's reign, entitled, 'an act for the further qualification of justices of the peace,'" and that the same is situate, lying and being, or issuing out of lands, tenements, or hereditaments, being within the township of —— [*as the case may be.*]

By the above act of 18 *G.* 2. *c.* 20. § 3. Any person acting as a justice of the peace, without having taken and subscribed the oath of qualification, or without being qualified, is liable to a penalty of £100. But the acts done by a justice who has not duly qualified, and taken the oath at the sessions, are not absolutely void; and therefore a person executing the warrant of such justice, is not answerable in an action of trespass. 3 *B.* & *A.* 266.

Of their Power, Duty, and Office.

1. The commission empowers them to conserve the peace. 2. It empowers any two, or more, to hear and determine all felonies, and other offences mentioned in the commission. His jurisdiction is confined to the district for which he is commissioned. It seems, however, that recognizances and informations, voluntarily taken before him, in any place, are good. 2 *Haw.* *c.* 8. § 28. But a justice has no jurisdiction, either over the offence or the offender, when the one is committed, and the other abiding, in another district. There are cases, however, where the presence of an offender within the district gives the justice authority, arising out of the necessity of preserving the peace, to proceed against the party offending. Thus, if a man commit a felony in the home district, and goes into an outer district, a justice of such outer district may take his examination, and the information against him, in that district; and may commit him, and bind over the witnesses to give evidence at the trial; and in short, proceed in all respects as if the offence had been committed within his jurisdiction. 2 *Hale*, 51.

By 24 *G.* 2. *c.* 55. If any person (against whom a warrant is issued) shall escape into any other county, (or district) any justice of that district, upon proof, on oath, of the handwriting of the justice granting the warrant, may indorse his name thereon, which

shall be a sufficient authority to the person to whom the warrant is directed, to execute it in such district, and carry the offender before the justice who indorsed the warrant, or some other justice of the district, in case the offence be *bailable;* but if not, then before a justice of the district where the offence was committed.

By statute 1 & 2 *P. & M. c.* 13. In cases of *manslaughter*, and *felony*, justices of the peace are directed to take the *examination* merely, of the prisoner, and certify the same at the next gaol delivery; since which enactment, it has been usual for the justices, in all cases of *great moment*, to commit the prisoner for trial at the next assizes, or gaol delivery; and only in smaller matters—as in cases of petit larceny, and offences *not capital*, to bind over to the quarter sessions. 2 *Hale*, 46. The commission also admonishes them, in all cases of difficulty, to let judgment in nowise be given thereon, unless in the presence of *one of the judges* appointed to hold the assizes for the district. It may be further observed, that the offences of *murder* and *manslaughter*, are not mentioned in the commission; from which circumstance it may be inferred, that justices of the peace could never claim jurisdiction over these offences. *Fitz. & Staund.* 9 *H.* 4. 24. *Coron.* 457. Where a matter of right or title to property comes in question, the justices of the peace have then no jurisdiction. *R. v. Burnaby*, 3 *Salk.* 217. 2 *Ld. R.* 900. A justice ought not to act in any case in which he himself is interested, but should cause the party to be convened, or carried before some other justice, or desire the aid of some other justice who is present. *Dalt.* 173. And in all cases where a justice is empowered to hear and determine a matter out of sessions, he should make a *record* in writing, under his hand, of all the matters and proofs; and all convictions should be returned by him to the sessions. *Dalt. c.* 115. 2 *T. R.* 285.

The following summary of the practical duties of a justice of the peace, is taken from *Archbold:*

The Official Duties of a Justice of the Peace.

When complaint is made before a justice of the peace, of any indictable offence having been committed within the district to which his commission extends, it is his duty to have the offender brought before him; and if the offender be not already in custody, the justice may issue a warrant for his apprehension. And a justice of the peace may, in all cases, issue his warrant in the first instance, whether the offence imputed to the party be treason, felony, or misdemeanor. *Butt. v. Conant*, 1 *Brod. & Bing.* 548. It is not, however, very usual, in cases of misdemeanor, to issue

a warrant in the first instance, unless in aggravated cases, or where there is a likelihood of the party's absconding, if he be apprised of the complaint being made against him. In ordinary cases, it is usually deemed sufficient to issue a summons in the first instance; and if that be disobeyed, then to issue a warrant.

Before a justice of peace grants a warrant for the apprehension of an offender, it is prudent, in all cases, especially in cases of felony, to examine the person requiring the warrant, or his witnesses, upon oath; and if upon such examination it appears either that the party has actually committed the offence imputed to him, or that there are reasonable grounds to suspect him of having committed it, the justice should grant the warrant.

This examination or information may be taken in the following form:—

Home District, } The information and complaint of A. B. of the
to wit. } township of —— in the home district, yeoman, taken upon oath, this —— day of —— in the year of our lord 1834, before C. D. esquire, one of his Majesty's justices of the peace for the said district.—The said informant, upon his oath saith, that—[*stating the facts, as nearly as possible, in the words of the party.*] (Signed,) A. B.

Taken and sworn at Toronto aforesaid, }
the —— day of —— 1834. }
Before C. D. *J. P.*

Form of the Summons.

Home District, } To the Constable of the township of —— in
to wit. } the said district.

Whereas A. B. of —— in the district aforesaid, labourer, hath this day been charged before me, C. D. esq. one of his Majesty's justices of the peace for the district aforesaid, on the oath of a credible witness, for that he the said A. B. on the —— day of —— in the year of our lord 1834, at the township of —— in the district aforesaid, did [*here state the offence.*] These are therefore to require you, forthwith to summon the said A. B. to appear before me, at my dwelling-house, in the township of —— in the said district, on [*Wednesday*] next, the [*second*] day of [*July*] instant, at the hour of [*eleven*] in the forenoon of the same day, to answer the said charge, and to be further dealt with according to law. And be you then there, to certify what you shall have done in the premises. Herein fail you not.

Given under my hand and seal, at Toronto, in the district aforesaid, the [*first*] day of [*July,*] in the year of our lord 183–.

C. D. *J. P.*

This summons should be served upon the party personally, if possible; but if, after due diligence used to effect a personal service, it be found impracticable, from the party's concealing himself, or causing himself to be denied, or the like, the summons may, in such case, be left for him at his usual place of abode; and if he do not afterwards attend at the time and place specified in such summons, the justice, upon being satisfied of these facts, will grant his warrant.

Form of the Warrant.

Home District, } To the Constable of the township of —— and
to wit. } all other peace officers in the said district.

Forasmuch as A. B. of —— in the district aforesaid, labourer, hath this day been charged before me, C. D. esquire, one of his Majesty's justices of the peace for the district aforesaid, on the oath of a credible witness, for that he the said A. B. on the —— day of —— in the year of our lord 183—, at the township of —— in the said district, did, &c. [*here state the offence.*] These are therefore to command you, in his Majesty's name, forthwith to apprehend and bring before me, or some other of his Majesty's justices of the peace in and for the said district, the body of the said A. B. to answer unto the said charge, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, at Toronto, in the district aforesaid, the —— day of —— in the year of our lord 183—.

C. D. *J. P.*

The warrant may be directed to any person; but it is usually directed to the constable of the district in which it is to be executed; for he alone can be punished for neglecting or refusing to execute it. It is not returnable at any particular time, but remains in force until it is executed. *Mayhew v. Parker*, 8 *T. R.* 110.

Form of the Indorsement.

District of Gore, } Forasmuch as proof, upon oath, hath been
to wit. } made before me, E. F. one of his Majesty's justices of the peace for the said district, that the name C. D. to the within warrant subscribed, is of the handwriting of the justice of the peace within mentioned: I do therefore hereby authorise —— who bringeth to me this warrant, and all other persons to whom the said warrant was originally directed, to execute the same within the said district of Gore.

Given under my hand and seal, at Hamilton, in the said district of Gore, the —— day of —— in the year of our lord ——

E. F. *J. P.*

As soon as the party accused is brought before the justice, the latter calls upon the witnesses for the prosecution, to give their evidence, and administers to each the following oath:—

Oath.

"You shall true answer make to all such questions as shall be demanded of you—So help you God."

The justice then proceeds to examine the witness, and takes down his desposition in writing. The following is the form of the—

Deposition of a Witness.

Home District, to wit. } The examination of C. D. of the township of —— labourer, taken on oath this —— day of —— in the year of our lord 1834, before me, J. P. one of his Majesty's justices of the peace for the district aforesaid, in the presence and hearing of A. B. charged this day before me, the said justice, for that he the said A. B. on —— at —— [&c. describing the nature of the charge, as in the summons or warrant.] This deponent saith, that &c.] here insert the statement of the witness, as nearly as possible, in his own words; then read the same over to him; ask him if it is correctly taken down; and get him to subscribe his name.]

Taken before me, the day and year above mentioned. } C. D.
J. P.

If from the absence of witnesses, or from any other reasonable cause, it become necessary or advisable to defer the examination for a time, the justice may do so. If the accused be in the custody of the constable, under the warrant, and it be intended to resume the examination on the next day, or within some other short period, a mere verbal order to the constable, to bring the prisoner before the justice at the time appointed, will be sufficient; and the prisoner remains in custody under the warrant, in the mean time. 2 *Hale, H.* 120. But if it be necessary to remand him for any considerable period, it may be prudent to commit him to prison in the mean time, under the following—

Commitment for Re-examination.

Home District, to wit. } C. D. esquire, one of his Majesty's justices of the peace for the said district, to the constable of the township of —— in the said district; and to the keeper of the common gaol at Toronto, in the said district.

These are to command you, the said constable, in his said Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. B. charged this day before me, the said justice, on the oath of A. O. on suspicion that he the said A. B. [*on* —— *at* —— *&c. describing the offence*]; but inasmuch as E. F. a material and necessary witness against the said A. B. resides at —— a distance of —— miles from the said dwelling-house of the said A. O. [*or as the case may be*] and he the said A. O. hath not been able to procure the attendance of the said E. F. but will use his best endeavour to do so on the —— day of —— instant; you, the said keeper, are hereby required to receive the said A. B. into your custody, in the said common gaol, until —— the —— day of —— instant, when you are hereby required to bring the said A. B. before me at —— in the said district, or before such others of his Majesty's justices of the peace for the said district as shall be then and there present, to be re-examined, and further dealt with according to law. Herein fail you not.

Given under my hand and seal, the —— day of —— in the year of our lord 1834. C. D., *J. P.*

Upon the day appointed by the commitment, the keeper of the prison will cause the accused to be brought before the committing magistrate, who will then proceed in the examination of the witnesses, in the manner already mentioned.

If, upon the prisoner being remanded, or indeed at any time before the examination is finally closed, the justice be apprised that any person who can give material evidence against the prisoner will not attend voluntarily before him, he may grant the following

Summons of a Witness.

Home District, } To the Constable of the township of —— in the said district.

Whereas information hath been made before me, C. D. esquire, one of his Majesty's justices of the peace for the said district, that A. B. late of —— in the said district, labourer, [*on the —— day of —— in the year of our lord* 183—, *at, &c. describing the nature of the charge, as in a warrant or commitment*]; and that E. F. of —— in the said district, yeoman, is a material and necessary witness to be examined concerning the same: These are therefore to require you to summon the said E. F. to appear before me at —— in the said district, on the —— day of —— instant, at the hour of —— o'clock in the ——noon of the same day, to testify his knowledge concerning the premises.—Herein fail you not. Given under my hand and seal, the —— day of —— in the year of our lord 1834. C. D., *J. P.*

A copy of this summons should, in strictness, be served personally on the witness, and the original at the same time shewn to him. If the witness refuse to attend, upon being summoned, a warrant may be then issued to compel him.

Warrant for a Witness.

To the Constable of —— in the home district.

Home District, } Whereas it hath been made appear to me, J. C.
to wit. } esq. one of his Majesty's justices of the peace in and for the home district, upon the oath of A. O. that he the said A. O. was feloniously robbed of [*state the facts*] and that he has cause to believe that C. D. of —— is a material witness to prove by whom the said robbery was committed: and whereas it hath been duly proved on the oath of K. L. constable of —— that the said C. D. was duly summoned to appear before me, this day, at the hour of —— in the forenoon, to be examined touching the said robbery, but the said C. D. hath neglected and refused, and doth neglect and refuse to appear before me, in pursuance of the said summons: These are therefore to require you to cause the said C. D. forthwith to come before me, and give such evidence and information as he knoweth concerning the said offence, that such further proceedings may be had therein as the law doth direct.—

Given under my hand and seal, &c.

The examination of the witnesses being closed, if it appear that a case, even of suspicion, be made out against the accused, the justice then asks him if he would wish to say any thing in his own behalf;—if he decline doing so, he should not in any manner be pressed, or interrogated further on the subject, and he should upon no account be induced to say any thing upon a promise or hope, or even the slightest intimation being held out to him that it will be *better* or *worse* for him; because, his *confession*, under such circumstances, would be afterwards inadmissable in evidence against him: but if he say any thing *voluntarily*, the justice must take it down in writing; indeed, whether he says or declines to say any thing in his own behalf, the justice, in prudence, should take down in writing what passes upon the occasion, in order that the judge, at the trial, may see that the justice has done his duty in this respect; and this seems now to be imperative on the justices, by statute 3 *W.* 4. *c.* 3. § 2. by which statute the examination must be taken before *two* justices, if the prisoner is to be bailed; but if intended that he should be committed to prison, then it may be taken before *one* justice only. The examination must not be upon oath. The following is the form.

The Examination of the Accused before two Justices.

Home District, } The examination of A. B. of—— labourer, taken
} this —— day of —— in the year of our Lord 183— before us, C. D. and E. F. esquires, two of his Majesty's justices of the peace for the district aforesaid. The said A. B. being charged before us, the said justices, on the oath of —— of —— yeoman, for that he the said A. B. on —— at —— &c. [*describing the offence as in the warrant or commitment*] upon his examination now taken before us, saith (I am not guilty of the offence with which I am charged. I bought the goods in question for five shillings, from a man whom I met on the road leading to —— on the day before I was taken: I do not know the man's name, or where he lives, &c. [*stating what the accused says, as nearly as possible in the words he uses.*] or if the accused declines saying any thing in his behalf, the examination, after stating the offence with which the party is charged as above, may proceed thus:— And the witnesses against the said A. B. being examined in his presence, the said A. B. is now asked by me, if he wish to say any thing in his own behalf, whereupon the said A. B. saith (I shall not say any thing at present, but shall reserve what I have to say for the day of my trial, [*stating whatever the prisoner may say, as nearly as possible in the words he uses.*]

Taken before us the day and year above mentioned. } A. B.

The accused should be asked to sign his examination, but if he refuse to do so, still this will not prevent what he has said upon his examination from being given in evidence against him, if necessary, at the trial. *R. v. Lamb.* 2 *Leach*, 625.

If, upon considering the evidence which has been given on the part of the prosecution, together with the examination of the accused, there appear to be *no case* made out against him, the justice should discharge him. But if the evidence against the accused be such, that the justice thinks it should be submitted to a jury to consider and decide upon it, it will then be his duty to bind the prosecutor or party grieved in a recognizance to prosecute and give evidence, and each of the witnesses in a recognizance to give evidence.—This is done by stating to the prosecutor or witness, the substance of the recognizance and condition, stating it however in the second person, '*you acknowledge yourself to owe to our sovereign lord the king, &c.*' It is only the recognizance of the prosecutor or witness merely that can be required: the magistrate cannot compel either to find sureties. The only seeming exception to this is the case of a married woman, and a minor or infant under the age of twenty-one years, neither of whom can legally enter

into a recognizance, but must procure some other person to become bound for him or her. If the prosecutor or witness refuse to enter into the recognizance; or in the case of a married woman or a minor, if either of them should neglect to procure a surety to enter into recognizance for them, the magistrate may commit them until the sessions &c. or until such recognizance be given. *Bennet v. Watson*, 3. *M. & S.* 1.—a power, however, which should not be exercised without the greatest caution.

It is further justice to consider whether the case be a proper one for the sessions or the *assizes*, and bind the prosecutor and witnesses accordingly.—The following are the forms of the recognizances.

Recognizance to Prosecute and give Evidence.

Home District, } Be it remembered, that on the —— day of —— } in the —— year of the reign of King William the fourth, C. D. of —— in the said district, yeoman, personally came before me, J. P. one of his Majesty's justices of the peace for the said district, and acknowledged himself to owe to our sovereign lord the king, the sum of —— of good and lawful money of Upper Canada, to be made and levied of his goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if he the said C. D. shall fail in the condition hereunder written.

Whereas one A. B. late of —— was this day brought before the justice above mentioned, by the above bounden C. D. and was by him charged, for that the said A. B. (on —— at —— &c. [*describing the offence as in the warrant*]. Now, therefore, the condition of the above written recognizance is such, that if he the said C. D. shall and do appear at the next *(general quarter sessions of the peace, or general gaol delivery)* to be holden in and for the said district, and then and there prefer one bill of indictment for the said felony, against the said A. B. and shall then also give evidence there concerning the same, as well to the grand jurors that shall then enquire of the said felony, as also to them that shall pass upon the trial of the said A. B. that then the said recognizance to be void, or else to stand in full force and virtue.

Taken and acknowledged before ——

J. P.

Recognizance to give Evidence.

Home District, } Be it remembered, &c. [*the same form as before*] } The condition of the above written recognizance is such, that if the above bounden E. F. shall personally appear at the next *(general quarter sessions of the peace, or gene-*

ral gaol delivery) to be holden at —— in and for the said district, and then and there give such evidence as he knoweth, upon a bill of indictment, to be exhibited by C. D. of —— yeoman, to the grand jury, against A. B. late of —— labourer, for *(feloniously stealing —— the property of the said C. D.* [*or stating shortly the offence*] and in case the said bill be found a true bill, then if the said E. F. shall then and there give evidence to the jurors that shall pass upon the trial of the said A. B. upon the said bill of indictment, and not depart thence without leave of the court, then this recognizance to be void, or else to remain in its full force.

If, in the opinion of the justice, the felony is clearly made out against the prisoner, he should upon no account be admitted to bail: but if the justice entertain a reasonable doubt of his guilt, then under the 3 *W.* 4. *c.* 3. the prisoner, even in cases of felony, excepting murder, may be admitted to bail; but in such case, the act expressly requires, that if there be but one magistrate present, he shall be detained until he be taken before two justices, who are by the said act, empowered to admit the prisoner to bail. It would therefore be wrong for any *one* justice, in a case of felony, to admit to bail, under any circumstances; but by § 3. of the same act, one justice is competent to bail in cases of misdemeanor: under this act, the prisoner is entitled to cross examine the witnesses against him, but the justice or justices are not obliged to hear any evidence on his behalf, unless it shall appear to them to be meet, and conducive to the ends of justice, to hear the same.

If the two justices should determine that the case is a proper one in which to receive bail for the prisoner's appearance, the amount of such bail will, of course, be left to the discretion of the justices, who will take care that a sufficient amount is required, from good and sufficient sureties, to ensure the appearance of the accused: and if the prisoner be unable to procure such bail, he should then be committed by *two* justices to gaol, until he find such bail, or be otherwise delivered by due course of law. On the other hand, if the case be clearly made out against the prisoner, and the justice or justices entertain no reasonable degree of doubt as to the prisoner's guilt, the prisoner should then be committed, and not admitted to bail.

Warrant of Commitment.

Home District, } J. P. esquire, and C. D. esquire, two of his } Majesty's justices of the peace for the said district, to the constable of —— in the said district, and to the keeper of the common gaol at Toronto, in the said district: These are to command you the said constable in his Majesty's name, forthwith

to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. B. charged this day before us, the said justices, on the oath of C. D. of ——, farmer, and others, for that he the said A. B. [on the —— day of —— in the year of our Lord —— at —— in the said district, ten pieces of the current gold coin of this province called sovereigns; one woollen cloth coat; and one linen shirt; of the monies, goods and chattels of the said C. D. feloniously did steal, take and carry away); and you the said keeper are hereby required to receive the said A. B. into your custody, in the same common gaol, and him there safely to keep until he shall be thence delivered by due course of law, [*or*, if it be determined to admit him to bail, then say, 'until he shall enter into recognizance, with two sufficient sureties, himself in —— pounds, and each of the said sureties in —— pounds each, to be taken before us, or any two of his Majesty's justices of the peace for the said district, for his appearance before the justices at the next general quarter sessions of the peace, or general gaol delivery, to be holden in and for the said district, then and there to answer to our said sovereign lord the king, for and concerning the felony aforesaid, (or until he shall be thence delivered by due course of law.) Herein fail you not.

Given under our hands and seals, the —— day of —— in the year of our Lord 183—.

The Recognizance of Bail.

Home District, } Be it remembered, that on the —— day of ——
to wit. } in the —— year of the reign of King William the fourth, A. B. of —— yeoman, G. H. of —— yeoman, and J. K. of —— yeoman, came before us, J. P. and R. L. esquires, two of his Majesty's justices of the peace for the said district, and severally acknowledged themselves to owe to our said lord the king, that is to say, the said A. B. the sum of —— pounds, and the said G. H. and J. K. the sum of —— pounds each, to be respectively levied of their lands and tenements, goods and chattels, if the said A. B. shall make default in the performance of the condition endorsed hereon (or hereunder written).

The condition of this recognizance is such, that if the within (or above) bounden A. B. shall personally appear (at the next general quarter sessions of the peace, or general gaol delivery) to be holden in and for the said district, then and there to answer to our said sovereign lord the king, for and concerning the (felonious taking and stealing of —— the property of A. M. of —— yeoman, [*describing the offence shortly*] with the suspicion whereof the said A. B. stands charged before us the said justices, and to do and receive

what shall by the court be then and there enjoined him, and shall not depart the court without leave, then the within (*or* above) written recognizance shall be void.

Upon the recognizance being taken, if the defendant have appeared voluntarily, or if he be in custody of the constable, the justice discharges him as of course; but if he be in prison, the justices, upon application, issue the following,

Warrant of Deliverance.

Home District, } J. P. esq. and R. L. esq. two of his Majesty's
to wit. } justices of the peace for the said district, to the keeper of his Majesty's gaol at Toronto, in the said district. Forasmuch as A. B. late of —— in the said district, labourer, hath before us found sufficient sureties for his appearance, before the justices at the next general quarter sessions of the peace, (or before his Majesty's justices at the next general gaol delivery,) to be holden in and for the said district, to answer to our sovereign lord the king, for and concerning the [*describing the offence shortly, as in the recognizance*] for the suspicion whereof he was taken and committed to your custody, at the said gaol: We therefore hereby command you, on behalf of our sovereign lord the king, that if the said A. B. do remain in your custody for the said cause, and for no other, you shall forbear to detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will thereon ensue. Given under our hands and seals at —— in the district aforesaid, the —— day of —— 183—.

Note.—That the 3 W. 4. c. 3. requires that such justice or justices shall subscribe all such examinations, informations, bailments and recognizances, and deliver the same to the public prosecutor, before or at the opening of the court, on pain of being fined by the court.

It is in the discretion of a magistrate, when he takes the examination of a prisoner, whether he will allow the presence of an attorney or other legal adviser, either for the prisoner or prosecutor: it cannot in either case be claimed as a matter of *right*, as information might thereby be obtained and conveyed which would defeat the course of justice. In the case however, of a trial or summary conviction, before a magistrate, there is a difference; but in the latter case, it is reasonable, that a party upon his trial should have professional assistance. *Cox. v. Coleridge*, 1 *B. & C.* 37. *R. v. Barron*, 3 *B. & A.* 432. *R. v. Js.* of Staffordshire, 1. *Chit. Rep.* 217.

It seems that a magistrate may commit a party for a contempt, who makes use of scandalous and insulting language to him, whilst in the execution of his office; but as such a commitment is by way of punishment, it must be made by warrant, in writing. *Mayhew*

v. Loche. 7. *Taunt.* 63. 2 *Marsh.* 377. *R. v. Revel,* 1 *Str.* 420.; and must not be a *general* one 'till the party is discharged by due course of law,' but must be for a time certain. *R. v. James,* 5 *B. & A.* 894. The better course for a magistrate to adopt in such cases is, first, to require the offender to find sureties for his good behaviour, and in default of his doing so, then to commit him until the next quarter sessions, unless he sooner find such sureties, and enter also into his own recognizance for his *good behaviour. R. v. Langley,* 2 *Ld. R.* 10; 30 *per Holt. C. J.*

A justice of the peace is empowered, in all matters properly brought before him in his judicial character, or by particular statutes, to administer an oath; but it is very questionable how far he is justifiable in taking a voluntary affidavit, in any *extra judicial* matter, as is now too frequent a practice upon every petty occasion; for it is more than possible, that by such idle oaths, a man may frequently in *foro conscientiæ* incur the guilt, and at the same time evade the penalties of perjury. 4 *Bl. Com.* 137. Lord *Cooke,* indeed, says, that it is a high contempt, to administer an oath not warranted by law, and that the offence is punishable by fine and imprisonment. 3 *Inst.* 165.: and in a case, Lord *Kenyon* said, that 'he did not know but a magistrate subjected himself to a criminal information, for taking a voluntary extra-judicial affidavit. *Wm. Prec.* 14. 3 *Burns J.* 588.

Of their Liability, Indemnity and Protection.

1. As every person ought to be heard in his own defence, before he is convicted, if a justice therefore, in the case of a summary conviction, proceed against a party without previously summoning him to appear, it is such a misdemeanor as will render him liable to a criminal information. 1 *Salk.* 181. If a justice also, will not, on complaint to him made, execute the duties of his office as a magistrate, or is guilty of any wilful misconduct, the party grieved may not only move for an information, but may also apply to put him out of the commission. *Cromp.* 7. 2 *Atk.* 2. 1 *T. R.* 692. 7 *T. R.* 374. Where a justice, however, refuses to proceed in any matter which he is authorised or required to do by act of parliament, and his refusal does not arise from any corrupt or improper motive, the proper course for the party complaining, is to move for a *mandamus* to compel him to proceed. *R. v. Todd.* 1 *Str.* 530. Where a criminal information is applied for against a magistrate, the question for the court is not whether the act done be found, on investigation, to be strictly right or not, but whether it proceeded from an unjust, oppressive, or corrupt motive, or from mistake or error only: in the latter case, the court will not grant an informa-

tion, but leave the party complaining to his remedy by action or indictment, for it must be a case of clear, and apparent partiality, or wilful misbehaviour, to induce the court to proceed by information against a magistrate. *R. v. Barron*, 3 *B. & A.* 432. 1 *Burr.* 556. 2 *Burr.* 1162. The party complaining, also, must make a prompt application to the court, otherwise this proceeding will not be entertained: thus, where the facts complained of against a magistrate, took place twelve months before hand, an information was refused. *R. v. Bishop*, 5 *B. & A.* 612. Neither is a justice liable to be punished both ways, that is, criminally and civilly; for before the court will grant an information, they will require the party to relinquish his *civil* action, if any such is commenced. *R. v. Fielding*, 2 *Burr.* 719.; and so in the case of an indictment, the attorney general, on application, will grant a *noli prosequi*, if it appear to him a prosecutor is determined to carry on a *civil* action at the same time. *Ib.*

When a justice is convicted on an information, he must appear in person, to receive judgment. *R. v. Harwood*, 2 *Str.* 1088. 3 *Burr.* 1716. 1786. A justice of the peace, however, is, upon all occasions, strongly protected by the law, in the just execution of his office; for though the judgment be wrong, yet, if his intention is pure, the court of king's bench will never interfere by way of punishment. *R. v. Young*, 1 *Burr.* 556. *R. v. Cox.* 2 *Burr.* 785. Nor will the court even grant a *mandamus* against him, to command him to do what *may* render him liable to an action. *R. v. Dayrell*, 1 *B. & C.* 485. Where a magistrate, however, in committing a party for further examination, commits him for an *unreasonable* length of time, this has been lately determined to be altogether a void commitment, and to render him liable to an action of trespass. *Davis v. Capper*, *K. B. Mich. T.* 1829.

Calling a justice of the peace 'a rascal, a villain, and a liar,' when spoken of him as a justice, are *actionable*, as well as *indictable*. 2 *Str.* 617. 1168. 2 *Ld. R.* 1396. *R. v. Revel*, 1 *Str.* 420. With respect to actions against justices of the peace, the law affords them ample protection against the claims of a vindictive or litigious party; thus by 24 *G.* 2. *c.* 44. no writ can be issued against a magistrate, for any thing done by him in the execution of his office, until notice in writing of the intended process shall be delivered to him, or left at his usual place of abode, by the attorney or agent for the party who intends to sue, at least one calendar month before the suing out or serving the same, in which notice, must be clearly expressed, the cause of action, and on the back, the name of the attorney or agent, indorsed, with the place of his abode.

See further on this subject, title '*Action.*' *p.* 4.

By 2 *W. c.* 4. Entitled "an act to facilitate summary proceedings before justices of the peace, and to afford to such justices reasonable protection in the discharge of their duty;" it is enacted by § 2. That in *all* cases in which *two* or more justices are required to hear and determine any complaint, *one* justice shall be competent to receive the information and issue the summons, to appear before *two* or more justices, and after the adjudication by any *two* justices, all subsequent proceedings respecting the penalty, fine, imprisonment, costs or other matter or thing may be enforced by *either* of the said justices, or by *any other* justice for the same district, having before him a record of such conviction, certified by the justice or justices who adjudicated. § 3. Convictions appealed from and affirmed, or not appealed from, shall not be set aside for want of form. § 4. and whereas in cases of summary convictions, or the proceedings thereon, it may sometimes happen that justices of the peace may by some irregularity or defect in the form of their proceedings, render themselves liable to actions of trespass, where there was no disposition on their part to oppress the party, and where the guilt of the defendant may have been manifest; and it is reasonable to protect justices wherever it shall appear that their proceedings have been grounded upon good causes, and where they have acted without malice, it is enacted, that in all actions against justices on account of any conviction, or for or by reason of any act, matter or thing, done or commanded to be done by such justice or justices for the levying of any penalty, apprehending of any party, or otherwise carrying such conviction into effect, in case such conviction shall be quashed, the plaintiff in such action, besides the penalty levied, if any, shall not be entitled to more than *one shilling* damages, nor any costs of suit, unless it shall be expressly alleged in the declaration, that such acts were done maliciously and without any reasonable or probable cause. § 5. and such plaintiff shall not recover any penalty levied, nor any damages or costs, in case such justice shall prove at the trial, that such plaintiff was guilty of the offence whereof he was convicted, or on account of which he was apprehended, or had suffered, and has undergone, no greater punishment than assigned by law.

By the 4 *W.* 4. *c.* 17. the following fees and no more are authorised to be taken by justices of the peace, or by their clerks:

For an information and warrant for apprehension for an assault or other misdemeanor,	£0	3	9
For discharge of the defendant,	0	1	3
For information and warrant for surety of the peace,	0	3	9
For discharge of the defendant,	0	1	3

For every recognizance,.....	0	2	6
For every information, besides that of the complainant,...	0	1	3
For warrant of commitment,.....	0	2	6

And for costs in cases of conviction under penal statutes, when the fees are not expressly prescribed by any statute.

For information and warrant or summons,.....£	0	3	9
For every subpœna to a witness,.....	0	0	6
For every conviction under a penal statute,.....	0	7	6
For warrant to levy a penalty,.....	0	2	6
For making up every record of conviction, when the same is required to be returned to the sessions or on certiorari,	0	10	0
For every certificate of dismissal of any charge under the act providing for the summary punishment of petty trespasses and other offences,.....	0	2	6
And in cases before a single justice, where the penalty is no higher than £5, for the conviction,.....	0	2	6
And for the warrant to levy,.....	0	2	6

Commitment for insulting a Justice of Peace in the execution of his office. TOONE.

To the constable of —— and to the keeper of the common gaol at ——

—— to wit. Whereas A. B. being personally present this day at ——, before me J. C. esq. one of his Majesty's justices of the peace in and for the —— district, to answer and make his defence to a certain information before me exhibited against him [state the offence] and being so personally present before me hath this day been guilty of divers gross insults and contemptuous behaviour to me, the said justice, then being in the actual execution of my office as such justice of the peace as aforesaid, by accusing me of partiality and injustice in the execution of my office, [or as the case may be] And whereas the said A. B. in consequence of such his insolent and contemptuous behaviour, is now here, by me, the said justice, required to find sureties for his good behaviour, that is to say, two sufficient sureties to become bound with him in a recognizance in the sum of —— each, conditioned for the personal appearance of the said A. B. at the next general quarter sessions of the peace to be holden in and for the said district, and that in the mean time he should be of good behaviour; but the said A. B. hath refused to find sureties and to become bound in such recognizance as aforesaid: these are therefore to command you, the constable of ——, to convey and deliver the said A. B. into the custody of the keeper of the common gaol at —— in the said district, together with this my warrant; and I hereby command you, the said keeper, to receive the said A. B. into your custody in the said common gaol, and him there safely to keep until he find such sureties and

enter into such recognizance, or be from thence otherwise delivered in due course of law. Given under my hand and seal this —— day of —— in the year of our Lord 18—.

Another Form.—(Toone.)

To the Keeper of ——.

—— to wit. Receive into your custody the body of A. B. herewith sent you by me, J. C. esquire, one of his Majesty's justices of the peace in and for the —— district, and charged by me, the said justice, upon the view of me the said justice, for insolent behaviour, by insulting me, and obstructing me in the due execution of my office as a magistrate as aforesaid, against the peace of our lord the king, and him the said A. B. safely keep in your custody for want of sureties, or until he shall be discharged in due course of law; and for so doing this shall be your sufficient warrant.—Given, &c.

Another Form.—(Toone.)

—— with insolently and impudently misbehaving himself when under examination before me, the said justice, and S. P. esquire, another of his Majesty's justices of the peace for the said —— district, in talking obscenely, and expressing himself with the greatest contempt to us, the said justices, during the time he was under the said examination before us, against the peace of our lord the king, &c.

Notice of Motion for leave to file a Criminal Information against a Justice. (Toone.)

To C. A. Esq. one of his Majesty's justices of the peace, in and for the —— district.

Take notice, that I shall move his Majesty's court of king's bench, at Toronto, on the —— day of next term, or so soon after as counsel can be heard, for leave to file a criminal information against you, in the crown office, for misconduct in your office of justice of the peace, in illegally and without any reasonable or probable cause whatsoever, causing me to be apprehended, on the —— day of —— last, and to be committed to the common gaol at —— in the said district, and there to be detained for a long space of time, to wit, for the space of —— days, on a supposed charge of ——. Dated, &c.

Yours, &c. A. B.

KIDNAPPING.

Is the forcible abduction or stealing away of a man, woman or child, from their own country, and sending them into another.

Bl. Com. p. 218. 15 *Ed.*; and is punishable at common law with fine, imprisonment and pillory. *Ib.*: and also by statute 11 & 12 *W.* 3. *c.* 7. though principally intended against pirates, it is enacted, that if any captain of a merchant vessel, shall (during his being abroad) force any person on shore, or wilfully leave him behind, or refuse to bring home all such men as he carried out, if able and desirous to return, he shall suffer three months imprisonment. Upon this subject the learned commentator on *Blackstone, (Christian)* has this note:—Where a child is stolen for the sake of its clothes, it is the same species of felony as if the clothes were stolen without the child; but, without referring it to that class of offences, stealing a child from its parents is an act so shocking and horrid, that it would be considered the highest misdemeanor, punishable by fine, imprisonment and pillory, upon the same principle on which it was decided to be a misdemeanor to steal a dead body from a grave.

KING'S BENCH.

THE jurisdiction of this court is very high and transcendent. It keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings to be determined here, or prohibit their progress in the court below. It superintends all civil corporations; it commands magistrates and others to do what their duty requires, in every case where there is no specific remedy; it protects the liberty of the subject by speedy and summary interposition, and is empowered to find redress in every matter of inquiry. 2 *Haw. c.* 3. § 3. It takes cognizance both of criminal and civil causes. On the crown side, its jurisdiction extends to all manner of offences, from high treason down to the most trivial misdemeanor, or breach of the peace, and it may award process into any part of the province. Into this court, also, indictments from all inferior courts may be removed, by writ of certiorari, and tried either at bar, or by writ of *nisi prius*, at the assizes, for the district out of which the indictment is brought.

In most cases of misdemeanor, it is in the discretion of the court of king's bench, to inflict such fine and imprisonment, and even infamous punishment, (not prohibited by statute) on offenders, as the nature of the crime requires; and the court may commit to any prison in the district. 2 *Haw. c.* 5. § 5.

The court of king's bench, in this province, was created and established by statute 34 *G.* 3. *c.* 2.

KING'S EVIDENCE.

Is obtained by the admission of an accomplice against his fellows upon an implied confidence, which the judges of gaol delivery

have usually countenanced and adopted, that if such accomplice makes a full and complete discovery of that and of all other felonies, to which he is examined by the magistrate, and afterwards gives his evidence without prevarication or fraud, he shall not himself be prosecuted. 4 *Bl. Com.* 331. This discretionary power, however, thus exercised by justices of the peace, is founded in practice only, and cannot controul the authority of the court of gaol delivery, and exempt the accomplice, at all events, from being prosecuted; for a motion must be made to a judge for leave to admit an accomplice to be a witness, though the judge, unless he should see some particular reason for the contrary, will prefer the one to whom this encouragement has been held out by the justice of peace. *Ibid.* Such admission to be a witness, does not *entitle* the accomplice to a pardon of right, but amounts, merely, to a promise of a recommendation to mercy, upon condition, that the accomplice makes a full and fair disclosure of all the circumstances of the crime for which the other prisoners are tried, and in which he has been concerned in concert with them: upon failure, on his part, of this condition, he forfeits all claims to protection. *R. v. Rudd. Cowp.* 331. 1 *Leach*, 115. Thus, where upon a trial before *Buller, J.* at York, (England) the accomplice (who was admitted a witness) denied in his evidence, all that he had before confessed, upon which the prisoner was acquitted—the judge ordered an indictment to be preferred against the accomplice for the same crime; and upon his previous confession, and other circumstances, he was convicted and executed. 4 *Christ. Bl.* 331. *Note.* 6. And the claim of an accomplice does not extend beyond *those offences* in which he has been connected with the prisoner, and concerning which he has previously undergone an examination. *R. v. Duce.* 1 *Chetw. Burn.* 212.

Until the trial, the accomplice so to be admitted as king's evidence, will, of course, be kept in custody, as well as the principal.

See also further on this subject, title '*Approvers*,' ante p. 31.

KING'S STORES.

By 33 *El. c.* 4. 22 *C.* 2. *c.* 5. If any person having the charge or custody of any of the king's armour, ordnance, ammunition, shot, powder, or habiliments of war, or of any victuals provided for victualling the army, shall for lucre or gain embezzle, purloin, or convey away the same, to the value of 20*s.* or shall feloniously steal or embezzle, any of his Majesty's sails, cordage, or any other of his Majesty's naval stores, to the value of 20*s.* he shall (on prosecution within a year) be adjudged guilty of felony.

By 9 & 10 *W.* *c.* 41. 17 *G.* 2. *c.* 40. § 10. 11. No person, other than persons authorised, by contracting with his Majesty's officers, shall make any stores of war or naval stores, with the King's mark, that is, cordage of three inches and upwards, with a white thread laid the contrary way, or any smaller cordage, with a twine in lieu of white thread, laid the contrary way; or any canvas with a blue streak in the middle; or any other stores with the broad arrow, on pain of forfeiting the same, and £100. with costs, (on conviction at the assizes or sessions) half to the king and half to the informer.

By 9 10 *W.* *c.* 41. Any such person, in whose custody such goods or stores, so marked, (or any timber, thick stuff, or plank, marked with the broad arrow, 9 *G.* 31. *c.* 8. § 3.) shall be found, shall forfeit the same, and £200. with costs, in like manner, and be imprisoned till paid, unless he shall upon trial produce a certificate from the principal officers of the navy, expressing the quantity, and on what occasion he came by them.

By 9 *G.* *c.* 8. § 4. The court may mitigate the penalty, and as they see cause, commit the offender to gaol till payment, or may punish him corporally by public whipping, or hard labour for six months, or a less time.

By 12 *G.* 3. *c.* 24. § 1. If any person within this realm, or in any of the islands, countries, forts or places thereunto belonging, shall wilfully and maliciously set on fire, burn or destroy, (or aid therein) any of his Majesty's ships of war, whether on float, or building in any dock-yard, or building or repairing in any private yard, or any arsenal, magazine, dock-yard, rope-yard, victualling office or buildings, belonging thereto, or any military or naval stores therein deposited, he shall be adjudged guilty of felony.

The provisions of this act are by the 3 *W.* 4. *c.* 4. confirmed, in relation to this province.

LANDLORD AND TENANT.

Distress for Rent in Arrear.

1. Distress for rent, must be for rent in arrear; therefore, it may not be made on the same day on which the rent becomes due; for if the rent is paid in any part of that day whilst a man can see to count money the payment is good. 2. It must not be after tender of payment. 2 *Inst.* 107. 3. Persons having rent in arrear upon any lease determined, may distrain for such arrears after the determination of the lease in the same manner as if it had not been determined; provided that such distress be made in six calendar months after the determination of such lease, and during the con-

tinuance of such landlord's title or interest, and during the possession of the tenant from whom such arrear became due. 8 *An. c.* 14. § 6; 7. Before the statute of the 17 *C.* 2. *c.* 7. In case a distress was too little, where sufficient distress was to be had, a man could not distrain again be the demand never so great. *Mo.* 7. *Com.* 546. But now, by said statute, in all cases where the value of the cattle distrained shall not be found to be of the amount distrained for, the party to whom such arrears were due, his executors or administrators, may distrain again for the residue. § 4. So, in like manner, where the distress is made by virtue of the warrant of a justice of the peace, in nature of an execution: and the distinction appears to be this,—where a person hath an entire duty, he shall not split the entire sum, and distrain for part of it at one time, and for part of it at another time; and so *toties quoties* for several times, for that is great oppression: but if a man seizeth for the *whole* sum that is due to him, and only *mistakes* the value of the goods seized, there is no reason why he should not afterwards complete his execution, by making a further seizure. *Burrow, Mansfield,* 589. If any distress and sale shall be made for rent in arrear and due, when none is in truth due, the owner shall recover double value, with full costs. 2 *W. Sess.* 1. *c.* 5. § 5.

What Goods may be Distrained, and what not.

Distress for rent must be of a thing whereof a valuable property is in some body; and therefore dogs, bucks, does, conies, and the like, that are *ferœ naturæ*, cannot be distrained. 1 *Inst.* 47. Although it be of valuable property, as a horse, yet, if when a man or woman is riding on him, or an axe in a man's hand, cutting of wood, and the like, they are for that time privileged, and cannot be distrained. 1 *Inst.* 47. And it hath been held, that the horses joined to a cart, with a man upon it, cannot be distrained for rent, (although they may for damage feasant) but both cart and horses may, if the man be not upon the cart. 1 *Vent.* 36. Valuable things shall not be distrained for rent for benefit and maintenance of trades, which by consequence are for the commonwealth, and are there by the authority of law; as the horse in a smith's shop; nor a horse in a hostry; nor the materials in a weaver's shop for making of cloth; nor cloth or garments in a tailor's shop; nor sacks of corn or meal in a mill; nor any thing distrained for damage feasant; for it is in the custody of the law, and the like. 1 *Inst.* 47. Beasts belonging to the plough shall not be distrained, (which is the ancient common law of England, for no man shall be distrained by the utensils or instruments of his trade or profession, as the axe of the carpenter, or the book of a scholar,) while goods or

other beasts may be distrained. 1 *Inst.* 47. But this rule holds only in distresses for rent arrear, and the like; but doth not extend to cases where a distress is given in the nature of an execution, by any particular statute, as for poor rates, and the like. 3 *Salk.* 136. Furnaces, cauldrons, or other things, fixed to the freehold, or the doors or windows of a house, or the like, cannot be distrained. 1 *Inst.* 47. Things for which a replevin will not lie, so as to be known again, as money out of a bag, cannot be distrained. 2 *Bac. Abr.* 109. But money in a bag, sealed, may be distrained, for that the bag sealed may be known again. By the 2 *W. Sess.* 1. *c.* 5. Persons having rent, in arrear, on any demise lease or contract, may seize and secure any sheaves or cocks of corn, or corn loose, or in the straw, or hay being in any barn or granary, or upon any hovel, stack or rick, or otherwise, upon any part of the land charged with rent, and may lock up or detain the same, in the place where found, in the nature of a distress, so as the same be not removed, to the damage of the owner, out of the place where found and seized, but be kept there (as impounded) till replevied or sold. § 3. Also, by the 11 *G.* 2. *c.* 19. The landlord may take and seize corn, grass, hops, roots, fruits, pulse or other product growing, as a distress; and the same may cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other proper place, on the premises; and if there shall be no barn or proper place on the premises, then in any other barn or proper place which he shall procure, so near as may be to the premises; the appraisement whereof shall be taken when cut, gathered, cured and made, and not before. § 8. And notice of the place where the goods so distrained shall be lodged, shall in one week after the lodging thereof, be given to the tenant or left at the last place of his abode. § 9. And generally, whatever goods and chattels the landlord finds upon the premises, whether they in fact belong to the tenant or a stranger, are distrainable by him for rent, with the exceptions however above specified; for otherwise, a door would be opened to infinite frauds upon the landlord; and the stranger hath his remedy over by action on the case against the tenant, if by the tenant's default the goods are distrained. 3 *Blackstone*, 8. So where a stranger's beasts escape into the land, they may be distrained for rent, though they have not been *levant* and *couchant*, provided they are trespassers; but if the tenant of the land is in default in not repairing his fences, whereby the beasts came into the land, the landlord cannot distrain such beasts, though they have been levant and couchant, unless he have caused notice to be given to the owner, and the owner suffers them to remain there afterwards. *Lutw.* 364.

A rent may not be distrained for in the night, but in the day time. 1 *Inst.* 142. for before sunrising or after sunset, no man may distrain but for damage feasant. *Mirrour*, *c.* 2. § 26.

Distress how to be Demeaned.

By 11 *G.* 2. *c.* 19. any person distraining may impound or otherwise secure the distress of what kind soever it be, in such place or in such part of the premises as shall be most convenient; and may appraise and sell the same as any person before might have done off the premises. § 10.

Cattle distrained may not be worked or used, unless for the owners benefit, as a cow milked or the like. *Cro. Jac.* 148. and if the distress be lost by the act of God, as if the distress dies in the pound, without any default in the distrainer, in such case he may distrain again. 1 *Salk.* 248.

By stat. 2 *W. Sess.* 1. *c.* 5. Where any goods shall be distrained for rent, and the tenant or owner shall not, within *five* days after such distress, and notice thereof left at the premises, replevy the same, the person distraining, with the sheriff, under sheriff, or *constable* of the peace, shall cause the goods distrained, to be appraised, by two sworn appraisers, (whom such sheriff or constable shall swear) to appraise the same truly, and after such appraisement, the same shall be sold for the best price that can be got, for satisfaction of the rent and charges of the distress, appraisement and sale; leaving the overplus (if any) with the sheriff, under sheriff or constable, for the owners use.

Fraudulent removal of Goods, &c.

By the 11 *G.* 2. *c.* 19. § 1. If any tenant for life, years, at will, sufferance, or otherwise, shall fraudulently, or clandestinely, convey off the premises his goods or chattels, to prevent the landlord from distraining, such landlord, or any person by him lawfully empowered, may, in thirty days next after such conveying away, seize the same, wherever they shall be found, and dispose of them in such manner as if they had been distrained on the premises. Sec. 2. But no landlord shall distrain any goods sold bona fide, and for a valuable consideration, before such seizure made, to any person not privy to such fraud. Sec. 3. And if any tenant shall so fraudulently remove and convey away his goods or chattels, or if any person or persons shall wilfully and knowingly aid or assist him in such fraudulent conveying away or carrying off of any part of his goods or chattels, or in concealing the same, every person so offending shall forfeit to the landlord *double the value* of such goods, to be recovered in any court of

record. Sec. 4. But if the goods and chattels so fraudulently carried off or concealed shall not exceed the value of £50, the landlord, or his agent, may exhibit a complaint, in writing, before *two* justices of the peace of the same county or division, residing near the place where such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon the parties concerned, examine the fact, and all proper witnesses, upon oath, (or if a Quaker, upon affirmation) and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged; and to inquire in like manner of the value of such goods and chattels, and upon full proof of the offence, by order under their hands and seals, the said justices shall adjudge the offender or offenders to pay *double the value* of the said goods and chattels to such landlord, his bailiff, servant or agent, at such time as the said justices shall appoint; and if the offender or offenders, having notice of such order, shall refuse or neglect so to do, they shall, by their warrant, levy the same by distress; and for want of such distress, may commit the offender or offenders to the house of correction, there to be kept to hard labour, without bail or mainprise, for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied. Sec. 5. Persons aggrieved by order of such justices, may appeal to the next general or quarter sessions, who may give costs to either party. Sec. 6. And where the party appealing shall enter into recognizance, with one or two sureties, in double the sum so ordered to be paid, with condition to appear at such sessions, the order of the justices shall not be executed against him in the mean time. Sec. 7. Where any goods or chattels, fraudulently or clandestinely conveyed or carried away, shall be put, placed, or kept in any house, barn, stable, out-house, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall be lawful for the landlord, or his steward, bailiff, receiver, or other person or persons impowered, to take and seize, as a distress for rent, such goods and chattels, (first calling to his assistance the constable, headborough, or other peace officer of the district, &c.); and in case of a dwelling-house, (oath being first made before a justice of the peace, of a reasonable ground to suspect that such goods or chattels are therein) in the day time, to break open and enter into such house, barn, stable, out-house, yard, close, or place, and to take and seize such goods and chattels for the said arrears of rent, as he might have done if they had been in any open place.

Case of Tenant holding over.

By the 4 *G.* 2. *c.* 28. If any tenant for life, or years, or other person who shall come into possession by, from, or under him, shall wilfully hold over any lands after the determination of such term, and after demand made, and notice in writing given for delivering the possession thereof, he shall, for the time he shall so hold over, pay double the yearly value, to be recovered by action of *debt* in any court of record. § 1.

By 11 *G.* 2. *c.* 19. § 18. If any tenant shall give notice of his intention to quit the premises at a time mentioned in such notice, and shall not accordingly deliver up the possession at the time in such notice contained, he, his executors or administrators, shall from thenceforward pay *double rent*, to be recovered in like manner as the single rent.

Deserting the Premises.

§ 16. If any tenant at rackrent, or where the rent reserved shall be full *three-fourths* of the yearly value of the demised premises, who shall be in arrear for *one year's rent*, shall desert the premises and leave the same uncultivated or unoccupied, so as no sufficient distress, can be had, two justices, (having no interest in the premises) may at the request of the landlord go upon and view the same, and affix on the most notorious part of the premises, notice in writing what day (at the distance of *fourteen* days at the least) they will return to take a second view, and if on such second view, the tenant shall not appear and pay the rent, or there shall not be sufficient distress on the premises, then the justices may put the landlord into possession, and the lease as to such demise shall from thence be void. § 17. But the tenant may appeal to the next justice or justices of assize, who may award costs to either party.

Rent how far recoverable by Executors.

By the 32 *H.* 8. *c.* 37. It is enacted that the executors and administrators of any person to whom any such rent shall be due and not paid at the time of his death, may distrain upon the premises, so long as they continue in the possession of such tenant, or of any other person claiming under him.

Distress by Warrant of Justices of the Peace.

See *ante* title "distress," p. 150.

Notice to quit.—(Archbold.)

Sir,

I hereby (as agent for Mr. John Nokes, your landlord, and on his behalf), give you notice to quit, and deliver up possession

of the [house, lands and premises, with the appurtenances] situate at —— in the —— district, which you hold of [him] as tenant thereof, on the —— day of —— next, or at the expiration of the current year of your tenancy, which shall expire next after the end of one half year, from the date of this notice. Dated the —— day of —— 183—.

To JAMES NOKES.

Mr. Joseph Stiles.

Warrant to Distrain.—(Archbold.)

To Mr. A. B., my bailiff, greeting: Distrain the goods and chattels of Joseph Stiles, [in the house he now dwells in, *or* "upon the farm he now occupies," &c. *as the case may be,*] situate at —— in the —— district, for —— pounds, being the amount of [one year's] rent due to me for the same, on the day of —— last; and for your so doing, this shall be your sufficient warrant and authority. Dated this —— day of —— 183—.

JOHN NOKES.

Inventory of Goods Distrained.

An inventory of the several goods and chattels distrained by me whose name is here-under written, the —— day of—— in the year —— in the houses, out-houses and lands, of A. T. in —— by the authority, and on the behalf of A. L. of —— for —— pounds arrears of rent due to him the said A. L.

In the Dwelling-House.

One Table,
Six Chairs, &c.

In the Cow-House.

Six Cows,
Two Calves, &c.

Notice of Distress.

Mr. A. T.

Take notice, that by the authority, and on the behalf of your landlord, A. L. I have this —— day of —— in the year of our lord —— distrained the several goods and chattels specified in the schedule hereunto annexed, in your houses, out-houses and grounds, at —— for —— pounds, arrears of rent due to him the said A. L.; and if you shall not pay the said rent so due and in arrear as aforesaid, or replevy the said goods and chattels,

I shall, after the expiration of five days from the date hereof, cause the said goods and chattels to be appraised and sold, according to the statute in that case made and provided.

Given under my hand, the day and year first above written.

A. D.

Witness, that a copy hereof was this day delivered to the said A. T. (or left at the dwelling-house of the said A. T.)

A. W.

Appraisers' Oath.

You, and each of you, shall well and truly appraise the goods and chattels mentioned in this inventory, according to the best of your understanding—So help you God.

Form of the Appraisement.

The appraisement may be in the form of the inventory, specifying the particulars, and their respective valuations; and then add at the end—

Appraised by us, this ——— day of ——— in the year ———.

A. P.
B. P. } Sworn Appraisers.

Complaint to be exhibited in writing, before two Justices, in the case of Goods clandestinely removed, on the 11 *G.* 2. *c.* 19. (Burn.)

Home District, to wit. } Be it remembered, that this ——— day of ——— A. J. of ——— complaineth that A. O. hath fraudulently and clandestinely removed and conveyed away, certain goods and chattels of ——— not exceeding the value of £50, from ——— at ——— to prevent ——— from distraining the said goods and chattels, for arrears of rent due to the said ——— for the said ———; and that B. O. of ——— yeoman, and C. O. of ——— yeoman, wilfully and knowingly aided and assisted the said A. O. in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same.

A. J.

Exhibited at ——— the ——— day of ——— before us ——— justices of the peace residing near ——— not being interested in ———.

Summons thereupon. (Burn.)

Home District.—To the Constable of ———.

Whereas complaint in writing hath been this ——— day of ——— exhibited at ——— before us ——— justices of the peace for the

said district, residing near —— not being interested in —— by A. J. of —— gentleman, setting forth that A. O. of —— yeoman, hath fraudulently and clandestinely removed and conveyed away certain goods and chattels of —— not exceeding the value of £50 from —— to prevent —— from distraining the said goods and chattels, for arrears of rent due to the said —— for the said —— and that B. O. of —— yeoman, and C. O. of —— yeoman, wilfully and knowingly aided and assisted the said —— in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same: These are therefore to command you, and each and every of you, forthwith, to summon the said A. O., B. O. and C. O. to appear before us at —— on the —— day of —— at the hour of —— in the forenoon of the same day, to answer the matter of the said complaint. Given under our hands and seals, at —— the —— day of ——.

The Conviction,

Should be in the form required by the 2 *W.* 4. *c.* 4.—See *ante* title "Conviction," p. 138.

Warrant of Distress, in case the offenders, having notice, refuse or neglect to pay, pursuant to the preceding order. 11 *G.* 2. *c.* 19. 27 *G.* 2. *c.* 20. (Burn.)

Home District.—To the Constable of ——.

Whereas A. O. of —— yeoman, B. O. of —— yeoman, and C. O. of —— yeoman, were, by an order dated the —— day of —— under the hands and seals of us —— and —— justices of the peace of —— residing near —— not being interested in —— ordered to pay the sum of —— to —— or to his bailiff, servant or agent, on or before the —— day of —— being double the value of certain goods and chattels of the said —— which the said A. O. was before us duly convicted of having fraudulently and clandestinely removed and conveyed away from —— to prevent the said —— from distraining the said goods and chattels, for arrears of rent due to the said —— for the said —— and which the said B. O. and C. O. were also duly convicted before us of having wilfully and knowingly aided and assisted the said A. O. in so fraudulently and clandestinely removing and conveying away, and in concealing the same: And whereas the said A. O., B. O., and C. O. having notice of our said order, have refused or neglected to pay, and have not paid the said sum of —— pursuant thereunto; and the same hath been fully proved before us: These are therefore to command you, and each and

every of you, to levy the said sum of —— by distress and sale of the goods and chattels of the said A. O., B. O. and C. O.; and we do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of within —— days, unless the said sum of —— for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid: And you are also hereby commanded to certify to us what you shall do by virtue of this our warrant. Given under our hands and seals, at —— the —— day of ——.

The Constable's Return thereupon, of the want of Distress. (Burn.)

Home District, } I, A. C. constable of ——, do hereby certify
to wit. } —— and —— justices of the peace for the said district, that I have made diligent search for, but do not know of, nor can find any goods and chattels of —— and —— and —— or of any of them, by distress and sale whereof I may levy the sum of —— pursuant to their warrant for that purpose, dated the —— day of ——.

Given under my hand, this —— day of ——.

Commitment thereupon to the House of Correction. (Burn)

Home District, } To the Constable of —— and also to the keeper
to wit. } of the house of correction at ——

Whereas —— and —— and —— were, by an order dated the —— day of —— under the hands and seals of us —— justices of the peace of the said district, residing near —— not being interested in —— ordered to pay the sum of —— to —— or to his bailiff, servant or agent, on or before the —— day of —— being double the value of certain goods and chattels of the said —— which the said —— was before us duly convicted, of having fraudulently and clandestinely removed and conveyed away from —— to prevent the said —— from distraining the said goods and chattels, for arrears of rent due to the said —— for the said —— and which the said —— and —— were also duly convicted before us, of having wilfully and knowingly aided and assisted the said —— in so fraudulently and clandestinely removing and conveying away, and in concealing the same; and whereas the said —— and —— and —— having notice of our said order, have refused or neglected to pay, and have not yet paid the said sum of —— pursuant thereunto, and the same hath been duly proved before us; and whereas it appears to us, by the return of —— constable of —— dated the —— day of —— that he hath made diligent search for, but doth not know of, nor can find any goods and chattels of

the said —— and —— and —— or any of them, by distress and sale whereof the said sum of —— may be levied pursuant to our warrant duly made and issued for levying the said sum of —— by distress and sale of the goods and chattels of the said —— and —— : These are therefore to command you, the said constable of —— &c. and each and every of you, to apprehend the said —— and —— and ——, and convey them to the said house of correction at —— aforesaid, and deliver them to the said keeper of the said house of correction ; and these are also to command you, the said keeper of the said house of correction, to receive them the said —— and —— and —— into the said house of correction, and there keep them to hard labour, without bail or mainprize, for the space of six months, unless the said sum of ——, so ordered to be paid as aforesaid, shall be sooner satisfied. Given under our hands and seals, at —— the —— day of ——.

Form of a complaint upon oath to be made before a Justice in case of a dwelling house where goods and chattels are fraudulently and clandestinely removed, and conveyed away and secured, so as to prevent them from being taken and seized as a distress for rent.—(Burn.)

Home District, } Be it remembered that this —— day of —— A. J.
to wit. } of ——, yeoman, complaineth and maketh oath that certain goods and chattels of A. O. of —— yeoman, have been frudulently and clandestinely conveyed and carried away from—— by the said A. O. his servant or servants, agent or agents, or other person or persons, aiding or assisting them to prevent —— from distraining the said goods and chattels for arrears of rent due to the said —— for the said ——, and that the said goods and chattels are put, placed or kept, in the house, barn, stable, out-house, yard, close, or other place, of —— at —— locked up, fastened, or otherwise secured, so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent ; and that the said A. J. hath a reasonable ground to suspect, and doth suspect, that the said goods and chattels are in the dwelling-house of the said ——— at ———.

Taken and sworn at ——— the ——— day of ——— before ——— A. J.

Warrant upon the preceding Complaint and Oath. (Burn.)

Home District, } To the Constable ———
{ Whereas A. J. of —— yeoman, hath this —— day of —— exhibited his complaint, and made oath before—— justices of the peace for the said district, that certain goods and chattels of A. O. of —— yeoman, have been fraudulently and clan-

destinely conveyed and carried away from —— by the said A. O. his servant or servants, agent or agents, or other person or persons, aiding or assisting therein, to prevent —— from distraining the said goods and chattels for arrears of rent due to the said —— for the said ——; and that the said goods and chattels are put, placed or kept, in the house, barn, stable, out-house, yard, close, or other place of —— at —— locked up, fastened, or otherwise secured, so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent; and that the said A. J. hath a reasonable ground to suspect, and doth suspect, that the said goods and chattels are in the dwelling house of —— at ——. These are therefore to command you, and each and every of you, to aid and assist ——, his steward, bailiff, receiver, or other person or persons impowered to take and seize, as a distress for rent, the said goods and chattels, in the day time to break open and enter into the said dwelling-house, barn, stable, out-house, yard, close, or other place of the said —— at —— and to take and seize the said goods and chattels, for the said arrears of rent, according to law. Given under my hand and seal, at —— the —— day of ——.

Recognizance on appeal against the preceding Conviction, for fraudulently assisting to convey Goods off the premises, to avoid a Distress, under the 11 *G.* 2. *c.* 19. § 5 *&* 6. (Toone.)

Home District, } Be it remembered, that on the —— day of ——
to wit. } in the —— year of the reign of our sovereign lord William the fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, defender of the faith, A. B. of —— in the said district, yeoman; C. D. of —— in the same district, yeoman; and E. F. of —— in the same district, yeoman, personally came before us, J. C. and S. P. esquires, two of his Majesty's justices of the peace in and for the said district, and acknowledged themselves to owe to our said lord the king, the sum of —— [*the amount must be double the sum ordered to be paid by the conviction.* 11 *G.* 2. *c.* 19.] to be levied of their goods and chattels, lands and tenements, to the use of our said lord the king, his heirs and successors, if the said A. B. shall make default in the condition following:—

The condition of this recognizance is such, that whereas the said A. B. is this day duly convicted before us, the above named justices of the peace, of having wilfully and knowingly aided and assisted B. O. of —— within the township of —— in the district aforesaid, in the night of —— the —— day of —— last, in fraudulently and clandestinely removing and conveying away part of the goods and chattels of the said B. O. from [*describe the place*,

house, tenement, &c. and where situate, &c.] not exceeding the value of *fifty pounds*, and in concealing the same so as to prevent E. F. of —— in the said district, esquire, from taking and seizing the same for arrears of rent due to the said E. F. from the said B. O. for a certain tenement, [*or as the case may be*] situate at —— aforesaid; for which offence the said A. B. has been adjudged to forfeit to the said E. F. the sum of —— being double the value of the said goods by the said A. B. so carried off and concealed: Now if the said A. B. shall personally appear at the next general quarter sessions of the peace to be held at —— in and for the said district, and commence and prosecute an appeal against the said conviction, and pay such costs as shall be then and there awarded by the said court, then this recognizance to be void.

Acknowledged before us.

Information and Complaint, under the 11 *Geo.* 2. *c.* 19. *of Tenant having deserted the Premises.* (Toone.)

Home District, } The information and complaint of A. B. of ——
to wit. } in the said district, taken this —— day of —— 18—, who saith, that he the said A. B. did, in and by a certain indenture bearing date the —— day of —— in the year of our Lord 18—, (or by written or verbal agreement, *as the case may be*) demise unto C. D. of —— in the district aforesaid, —— a certain messuage, [*or other premises, as the case may be*] situate and being at —— in the district aforesaid, at a rack-rent *(or three-fourths of the yearly value)*—that is to say, at the yearly rent of —— payable quarterly, *(if so)* on the —— day of —— &c.; and the said A. B. further complaineth, that on the —— day of —— now last past, there was in arrear and due unto him the said A. B. from the said C. D. the tenant of the said demised premises, one whole year's rent thereof, and that he the said C. D. hath deserted the said demised premises, and left the same uncultivated and unoccupied, so as no sufficient distress can be had to countervail the said arrears of rent, and that the said arrears of rent have been duly demanded, according to law; wherefore the said A. B. doth request J. C. and S. R. esqrs. two of his Majesty's justices of the peace for the said district, to go and view the said demised premises, and affix on the most notorious part thereof, a notice, in writing, what day they will return and take a second view thereof, and that a remedy may be given to the said A. B. according to the form of the statute in that case made and provided. Taken before us the said justices, the —— day of —— 18—.

Notice to be affixed on the premises being deserted.—(Burn.)

Mr Abraham Sutcliffe,

Take notice that upon the complaint of E. A., of —— yeoman, made unto us —— esquires, two of his Majesty's justices of the peace for the home district, that you the said A. S., have deserted the messuage and tenement, situate, lying and being at —— unto you demised, at rack rent, by him the said E. A., and that there is in arrear and due from you the said A. S. unto him the said E. A., one whole year's rent for the said demised premises, and that you have left the said premises uncultivated and unoccupied, so that no sufficient distress can be had to countervail the said arrears of rent; we, the said justices (having no interest nor either of us having any interest in the said demised premises,) on the said complaint as aforesaid, and at the request of him the said E. A. have this day come upon and viewed the said demised premises, and do find the said complaint to be true; and on the —— day of this present month of —— we will return to take a second view thereof, and if upon such second view, you or some person on your behalf, shall not appear and pay the said rent in arrear, or there shall not be sufficient distress on the said premises, then we, the said justices, will put him the said E. A. into the possession of the said demised premises, according to the form of the statute in such case made and provided. In witness whereof we have hereunto set our hands and seals, and have caused this notice to be affixed on the out door of the dwelling-house, the same being the most notorious part of the said premises, this —— day of—— in the year of our Lord ——

Record of putting the Landlord into Possession.

Home District, } Be it remembered, that on the—— day of——
to wit. } in the —— year of the reign of our sovereign lord William the fourth, at —— in the said district, E. A. of —— complaineth unto us —— esquires, two of his Majesty's justices of our said lord the King, assigned to keep the peace within the said district, and also to hear and determine divers felonies, trespasses and other misdemeanors, in the said district committed. That he the said E. A. did demise, at rack rent, unto A. S. of —— yeoman, the messuage and tenement, lying and being at —— aforesaid; and that on the said —— day of —— in the year aforesaid, there was in arrear and due unto him the said E. A. from him the said A. S. tenant of the said demised premises, one whole year's rent thereof, and that he the said A. S. had deserted the said premises, and left the same uncultivated and unoccupied, so as no sufficient distress could be had to countervail the said arrears of rent,

whereupon the said E. A. then and there, to wit, on the said —— day of —— in the year aforesaid, at —— aforesaid, in the district aforesaid, requested of us so as aforesaid, being justices, to him in this behalf, that a due remedy should be provided according to the form of the statute in that case made, which complaint and request by us the aforesaid justices being heard, we the said —— justices aforesaid, (having no interest in the said demised premises) on the said —— day of —— in the year aforesaid, at —— aforesaid, did personally go and view the said demised premises, and then and there upon our own proper view, did find the said complaint to be true, and did then and there affix on the most notorious part of the said premises, to wit, upon the out door of the dwelling-house aforesaid, a notice in writing, under our hands and seals, that we, the said justices, on the —— day of the same —— month of —— in the year aforesaid, would return to take a second view thereof, upon which said —— day of —— in the year aforesaid, we, the said justices, do now return and take a second view of the premises aforesaid, and there upon our own proper view, do find, that he the said A. S. doth not appear, nor any person on his behalf doth appear, and pay the said rent in arrear, and that there is no sufficient distress upon the premises aforesaid, nor upon any part thereof, to countervail the said arrears of rent; therefore we the said justices, at —— aforesaid, on the —— day of —— in the year aforesaid, do put the said E. A. into the possession of the said demised premises, according to the form of the statute aforesaid. In witness whereof, we the said justices, unto this record do set our seals, at —— aforesaid, in the district aforesaid, on the said —— day of —— in the year of our Lord 18—.

LARCENY.

Larceny is the felonious and fraudulent taking and carrying away by any person, of the mere personal goods and chattels of another. 1 *Haw.* 89.

There are two degrees of larceny—1. *Grand larceny*—which signifies the stealing of any goods or chattels above the value of *twenty shillings*, sterling. *Ordinance of Quebec*, 29 *G.* 3. *c.* 3.; and 2. *Petit larceny*—which includes those cases where the property stolen is under the value of 20s. *Ib.* In petit larceny, there can be no accessories.

The punishment for grand larceny, unaccompanied by any acts of violence is, banishment for life, or years, or imprisonment and confinement, with or without hard labour, in the common gaol, or in the penitentiary at Kingston; and for *petit larceny*,

whipping, or imprisonment; or, by stat. 4 *G.* 1. *c.* 11. § 1. transportation (or banishment) for seven years.

Of Grand Larceny.

Trespass.—As every larceny includes a trespass, a party who is not guilty of a trespass in taking the goods, cannot be guilty of felony, at *common law*, in carrying them away. 1 *Haw. c.* 33. § 1. Thus, where goods are delivered by the owner to another, upon a trust, or on account of the owner, the possessor cannot be guilty of felony in converting them to his own use, unless by some distinct act of taking—as, by severing part of the goods from the rest, with intent to convert them to his own use; he thereby determines the privity of the bailment, and the special property thereby conferred upon him. *Ibid.* 1. *Hale*, 504. But a bare charge of goods, such as that which a servant has over the goods of his master; or a mere liberty to make use of a thing for a particular purpose—such as a traveller at an inn has with respect to the furniture—does not prevent the party from being guilty of felony, if he take or convert the goods to his own use; in both cases the law presumes the property to be still in the possession of its owner. 1 *Hale*, 506.

Felonious taking.—There must be a felonious taking, as well as a *severance*, to complete the felony: but the least removal of the thing from its place is sufficient, as where a guest at an inn took off the sheets from his bed, with an intent to steal them, but was apprehended in the hall, the larceny was held to be complete; and so, where a man had taken a horse in a field, and while leading him away was apprehended: and again, where a man took plate out of a chest, with intent to steal it, and after laying it on the floor, was detected before he could move it further, the felony in either case, was held to be complete. 3 *Inst.* 109. *R. v. Simpson*, *Kel.* 31.

Severance.—But where some goods in a shop were tied to a string, fastened by one end to the counter, and a thief took up the goods and carried them towards the door, as far as the string would permit, and was then stopped, this was held to be *no felony*, as there was no actual *severance* of the property.

Where the felony is once completed, the offence is not purged by returning the goods, as where a robber, on finding little in a purse, restores it to the owner. 3 *Inst.* 69.

Felonious intent.—There must also be a felonious intent; and the usual and most direct evidence of this, is where the party takes the goods *clandestinely*, or shortly after the taking, such goods are found *concealed* in his possession, or where he *falsely denies* either

the taking or the possession; but where a man takes a plough from a field, and after ploughing his own land, returns it to the place whence he took it, telling the owner that he had used it, would be wrong to impute a felonious intent.

Recent possession.—With respect to the recent possession of the property, it may be laid down as a general rule, that where the stolen goods are found in the possession of another man, *shortly after* the theft or robbery, it is incumbent on him to prove how he came by them, otherwise, the presumption is that he obtained them feloniously; and this presumption is strengthened by proving, that the prisoner was seen near the spot from which the goods were taken, about the time of the felony; his conduct and demeanor at the time the goods are found in his possession. 2 *East. P. C.* 656.

Identity.—The identity of the goods should in general be satisfactorily proved, by marks or otherwise; but where a man is seen coming out of a barn, upon whom corn is found, of the same kind with that missed from the barn, this is strong presumptive evidence of guilt. *Ib.* 657.

Claim of right.—Where the taking of the goods is under a claim of right, this negatives the *animus furandi*, or felonious intent. *Ib.* 659.

Finding.—If a party, finding property, know the owner of it, and instead of restoring it, converts it to his own use, this will be felony. *Per Lawrence, J.* 2 *Russ.* 102. So, where a gentleman left a trunk in a hackney coach which had taken him from his *own door*, and the coachman kept it, and embezzled the contents, this was held to be felony, as he must have known where he took up the gentleman, and ought to have returned the trunk. *R. v. Lamb*, 2 *East, P. C.* 664. So, where the purchaser of a bureau found 700 guineas deposited in a secret drawer therein, which he embezzled, this was said by Lord *Eldon*, (after consulting some of the judges) to be felony; and that if a pocket-book containing bank notes, were left in the pocket of a coat sent to be mended, and the tailor took the notes, such a taking was clearly felonious. *Cartwright v. Green*, 8 *Ves.* 405. But, in all cases of finding, where it appears that the party *bona fide* endeavoured to discover the owner, a felonious intent cannot be presumed.

Fraud.—Where fraud is used to obtain the possession of property, the party therein is as much guilty of felony, as if he had taken it from the owner: thus, where A. having a design to steal B's. horse, which was impounded on a distress, enters a plaint of replevin, and (thereby getting it delivered to him) runs away with it, this is felony. 1 *Hale*, 504. 507. But, when the owner of property is induced, by fraudulent pretences, to give the prisoner *credit* for the goods, this is held not to be larceny, but a *cheat*, for

which the law has provided an especial remedy; *(see ante title 'Cheat',)* and so, where a party obtained the delivery of a horse which was exhibited in a fair for sale, by contracting to buy it, and to pay for it immediately, but when it was delivered to him he rode off and never returned, it was held that this was no felony, but a complete sale and delivery upon *credit*, in which the owner had parted with the property as well as the possession. *R. v. Harvey*, 1 *Leach*, 467. But where a man came to Smithfield market to sell a horse, and a jockey coming there to buy a horse, the owner delivered his horse to the jockey to try his paces, in the market-place, and the jockey rode off with the horse, this was adjudged to be felony, inasmuch as the possession only, and not the *property* of the owner in the horse, had been parted with. *Kel.* 82.

Pretence of exchange.—Where a prisoner offered to accommodate the prosecutor with gold for bank notes, upon which the prosecutor put down a number of notes, which the prisoner took up, and went away, promising to return immediately with the gold, but never came back; this was held to be larceny, if the jury believed that the prisoner intended to run away with the notes, and not to return with the gold. *R. v. Oliver*, *Cit.* 4. *Taunt.* 274.

Delivery by a servant.—Where a prisoner ordered a pair of candlesticks from a silversmith, to be sent to his lodgings, whither they were sent, with a bill, by a servant, who was directed to *bring back the money*, but who was sent back by the prisoner under some pretence, when the latter ran away with the candlesticks; this was held to be felony, *no credit* having been given by the owner, and the servant having no legal power to part with the goods till paid for them.

Bailment.—Where the possession of the goods is acquired, under a bailment of them from the owner, for a special purpose, and the bailee tortiously converts them to his own use, before the bailment is determined, the offence will not amount to larceny; as, where a tailor has cloth delivered to him, to make clothes of; or, where plate is delivered to a goldsmith, to work or to weigh; or a friend is entrusted with property to keep for the owners use. 2 *East. P. C.* 693. When the possession of the goods, however, is *fraudulently* obtained in the first instance, or where the contract of bailment is subsequently determined, or broken by some wrongful act of the bailee, then, a wrongful conversion of the goods will amount to larceny.

And first,—Respecting Possession obtained fraudulently by the Bailee.

The prisoner hired a horse of the prosecutor, on pretence of taking a ride into the country, and returning in the evening, but in truth with intent to steal it, and evidencing such felonious intent

by immediately selling the horse after possession of it was delivered to him; this was held to be felony. *R. v. Pear.* 2 *Leach*, 212. 2 *East. P. C.* 689. So, where a prisoner hired a chaise, at 5*s.* a day, saying he should want it for three weeks or a month, as he was going a tour round the north, and no tidings were obtained of him till twelve months afterwards, but no account was ever given of the chaise up to that moment, the presumption being against the prisoner, the jury found him guilty. *R. v. Semple*, 1 *Leach*, 420. 2 *East. P. C.* 691. In all these cases, the question of the *real intention* of the prisoner at the time of the hiring, is for the consideration of the jury; and if they find that the original taking of the thing hired was with a felonious intent to steal it, the offence will be *larceny*, although the contract of hiring may not for be any precise and definite time.

But where a prisoner hired a horse for a particular purpose, without any *felonious intention* at the time, and he wrongfully sold the horse after that purpose was executed, it was held that this tortious conversion did *not* constitute a *new taking* in law, so as to make him guilty of larceny. *R. v. Banks. Russ. and Ry.* 441. All such cases of *hiring*, therefore, will now depend upon the question, whether the hiring was *bona fide*, or whether it was only a pretence to get possession of the horse, in order that the party might have a better opportunity of stealing it. So, where the prosecutor's house being on fire, the prisoner in his presence and under his observation, removed some of his goods (as the jury expressly found) without any evil intention, though the very next morning, upon the prosecutor applying to her, she denied that she had any of the things belonging to him. The prosecutor, however, upon obtaining a search warrant, not only found his property in her house, but most of the articles were artfully concealed in various ways; yet, upon this special finding of the jury, that the intention to steal the goods came upon the prisoner *after* she had taken them, the judges were of opinion, that the transaction was not a *felony*, but merely *a breach of trust*. *R. v. Leigh*, 2 *East*, *P. C.* 694. 1 *Leach*, 411. *Note* (a).

Larceny by servants.—Where servants are entrusted with goods by their masters, no legal *possession* is transferred to the servant, who has but a bare charge; the possession of the servant being the possession of the master; the servant may therefore commit larceny by a fraudulent convertion of the goods to his own use. *R. v. Bass.* 1 *Leach*, 251. 523. 524.

Bankers Clerks.—So, if a banker's clerk be sent to the money drawer, for a special purpose; or if he be sent to bring money generally out of the drawer, and at the same time he take the opportunity of purloining money for his own use, this is felony. *R. v.*

Murray, 1 *Haw. c.* 33. § 7. 2 *East. P. C.* 683. 1 *Leach*, 344.

By Carriers.—But although in cases of bailment, no larceny can, in general, be committed of the goods, before the regular completion of the contract of bailment; yet there are some tortious acts which determine the privity of it, and amount in law, to a new taking from the possession of the owner. This principle furnishes the well known distinction, in the *carrier's* case, which, as has been justly observed, stands more upon positive law than upon sound reasoning. 2 *East. P. C.* 659.: for it certainly does seem a strange departure from good sense and reason, to hold, that if a man delivers goods to a carrier, to carry to a certain place, and he steal the *whole* of them, it is no felony; but that if he open a bale or trunk, and only steal *some* of the goods, it then becomes a felony. 13 *Edwd.* 4. 9. 6. A position, involving so great a contradiction, and one which has excited the surprise of so many learned persons, may well be startling to a common understanding: it is thus noticed by Lord Chief Justice *Kelyng*, who was certainly no mean authority in criminal law,—I marvel at the case put, 13 *Edw.* 4. 9. b. that if a carrier have a tun of wine delivered to him, to carry to such a place, and he never carry it, but sell it, all this is no felony; but if he draw part of it out, this is felony. I do not see why the disposing of the whole should not be felony also. *Kel.* 83.

The arguments in support of the above distinction, appear to be these:—There can be no larceny without a trespass: the carrier (having lawful possession of the goods entrusted him to carry) cannot therefore commit a tresspass in taking them, until that lawful possession is determined: this lawful possession can only be determined either by the natural termination of the contract of bailment, or by some tortious act of the carrier, which rescinds it; and the only tortious acts to determine this possession are, the breaking open a package, or a severance of part of the commodity from the rest.

By Millers.—So, if a miller steal *part* of the meal produced by the corn delivered to him to grind, this being taken out from the rest, is felony. 2 *East. P. C.* 698.

Fraudulent wagers.—A man is frequently swindled out of his money by fraudulent bets and wagers, upon a preconcerted plan to defraud him, when it becomes a material question, (as in all other cases of delivery) whether the *property*, or only the *possession* of the money, or other thing, is parted with; in the first case, the offence is held not to amount to larceny, as there is no felonious taking, but in the last it is otherwise, if the possession be gained *animo furandi.* Thus, where several sharpers inveigled the prosecutor to bet with them, at *hiding under the hat*, and after suffering him to win at first, contrived to strip him of a large sum of

money on the event of a bet, it was held, that though this was found by the jury, to be a preconcerted scheme to get his money, yet it was no felonious taking, as he parted with his property under the idea that it had been fairly won. *R. v. Nicholson*, 2 *Leach*, 610. 2 *East. P. C.* 699.

Card playing.—But where the prisoners decoyed the prosecutor into a public house, and there introduced the game of cutting cards, and the prosecutor having pulled out some money, but not playing on his own account, one of the sharpers prevailed upon him to cut the cards for him, and then, under pretence that the prosecutor had cut the cards for himself, and had lost, another of them swept his money off the table and went away with it; this was decided to be one of those cases that should be left to a jury to determine, *quo animo*, the money was obtained, and which would be *felony* if they found that the money was obtained upon a preconcerted plan to steal it. *R. v. Homer*, 1 *Leach*, 270. *Cald.* 295.

Ring dropping.—So, where the delivery is by way of pledge or security, the *property* remains in the owner, and *larceny* may be committed of it, if the delivery were obtained fraudulently, and with intent to steal; as, where the prisoner and some accomplices being in company with the prosecutor, one of them stooped down and pretended to find a valuable ring, upon which they promised the prosecutor that he should have his share of the value of it, and by that means prevailed on him to deposit his money and watch and to take the ring, until his share of the value should be paid, when the accomplices made off with the money and watch, and the ring proved to be of little or no value; this was held to be *larceny*, as the possession was obtained by fraud, and the property not altered. *R. v. Patch*, 2 *East*, *P. C.* 678. 1 *Leach*, 238. In like manner where several act in concert, all will be guilty of the felony. Thus, where three sharpers pretended that the prosecutor could not bet £100. when being provoked by the challenge, he produced that sum, in notes, which one of them took to count, and then handed to another, who, with the third, pretended to gamble for them; when the firstmentioned thief beckoned the prosecutor out of the room, and the other two decamped with the money, and all three afterwards shared it; this was held larceny in all three. *R. v. Standly*, *Russ. & Ry.* 305.

Of what things Larceny may be committed.

Every description of personal property, (with the exceptions hereinafter noticed) may be the subject of larceny: such as money; goods; wearing apparel; cattle, and the like; and by statute 2 *G.* 2. *c.* 25. bank notes; bills of exchange; and promissory notes for the payment of money. If the personal goods savour anything

of the realty, (or freehold) it cannot be larceny, and therefore they ought to be no way annexed to the freehold; therefore, it is no larceny, but a bare trespass, to steal corn or grass growing, or apples on a tree; but it is larceny to take them being severed from the freehold, as wood cut; grass in cocks; stones dug out of the quarry; and this, whether they are severed by the owner or even by the thief himself, if he sever them at one time, and then come again at another, and take them. 1 *Haw.* 93. 1 *H. H.* 510.

But by the 4 *G.* 2. *c.* 32. Every person who shall steal, rip, cut, or break, with intent to steal, any lead, iron bar, iron gate, iron palisadoe, or iron rail, fixed to any building, or in any garden, orchard, court, yard, fence, or outlet, belonging to any building, he, his aiders and abettors, and all who shall knowingly buy or receive the same, shall be guilty of felony, and shall be transported for seven years.

Also, the goods ought to have some worth in themselves, and not to derive their whole value from the relation they bear to some other thing, which cannot be stolen, as paper or parchment, on which are written assurances concerning lands; or obligations; or covenants; or other securities for a debt or chose in action. 1 *Haw.* 93. The goods ought also not to be things of a base nature, as dogs, cats, bears, foxes, monkeys, ferrets, and the like; which, howsoever they may be valued by the owner, shall never be so highly regarded by law, that for their sakes a man shall die. 1 *Haw.* 93.

Property unknown.—There may be felony in taking goods, the owner whereof is unknown; in which case, the King shall have the goods, and the offender shall be indicted for taking the goods of a person unknown. 1 *Haw.* 94.

Of Petit Larceny.

Petit larceny agrees with grand larceny, except in the value of the goods; if the goods stolen be of the value of 20s. sterling only, or under that sum, then the offence amounts to petit larceny only. *Ord. Qu.* 29 *G.* 3. *c.* 3. and if one be indicted for stealing goods above the value of 20s. sterling, the jury may find that the goods were *under* that value. 1 *Haw.* 95.

Of Larceny from the person.

If the goods are taken from a man's person, the offence then receives a further degree of guilt; and if it be attended with putting him in *fear*, it is called robbery.

See title, "*Robbery*," post.

Form of the Warrant for Larceny.

Home District, } To the constable of —— and all other peace
to wit. } officers whom it may concern.

Forasmuch as A. B. of —— labourer, hath this day been charged before me J. P., one of his Majesty's justices of the peace for the said home district, on the oath of a credible witness, for that he, the said A. B., on the —— day of —— in the year of our Lord 183—, at —— in the said district, did feloniously steal, take and carry away, twenty pieces of gold coin, called sovereigns, the property of one B. C.: These are therefore to command you, in his Majesty's name, forthwith to apprehend and bring before me, or some other of his Majesty's justices of the peace in and for the said district, the body of the said A. B. to answer unto the said charge, and to be further dealt with according to law. Herein fail you not.

Given under my hand and seal, the —— day of —— in the year of our Lord 183–. J. P. L. S.

For the forms of Commitment, see title "Commitment," "Justices of the Peace," &c.

LAW.

By the 32 *G* 3. *c.* 1. § 3. It is enacted, that in all matters of controversy relative to property and civil rights, resort shall be had to the laws of England, as the rule for the decision of the same. § 6. But that nothing in this act shall introduce any of the laws of England respecting the maintenance of the poor, or respecting bankrupts.

LIBEL.

A Libel has been usually defined to be any scandal *written* or *printed*, or otherwise expressed by symbols. *Lamb.* 64.; and taken in its largest sense, signifies any *writing*, or *printed* paper, picture, or the like, of an immoral or illegal tendency; and in a more limited sense, a malicious defamation of any person, either living or dead, made public either by printing, writing, signs or pictures, in order to provoke to wrath, or expose him to public hatred, contempt and ridicule. 4 *Bl. Com.* 105. But words *spoken*, however malicious and untrue, and actionable at law, will not amount to libel.

1. *Of Libels which affect the Public in general.*

All publications blaspheming the Almighty, or turning the christian religion into ridicule; all publications tending to vitiate

and corrupt the minds and morals of the people; any attempt made to degrade and vilify the constitution, and tending to circulate discontent among the members of the community, and stir up insurrection; any writing or printed matter, tending to vilify or disgrace the King: to lessen him in the esteem of his subjects: weaken the government: or raise jealousies between him and his people, are, more or less, of a libellous tendency. So, any publication reflecting in an improper manner upon either houses of parliament, is a libel at common law. To hold up the King's government to contempt and hatred, is also punishable as a libel. *R. v. Tuchin, Holt's Rep.* 424. And any publication tending to degrade and defame the Sovereign or ruler of a foreign state, upon terms of amity with this country, is a libel at common law.

2. *Of Libels on Private Individuals.*

Not only charges of a flagrant nature are libellous, but also those which place an individual in an ignominious light, and bring him into hatred, contempt or ridicule, on the ground that all such libels have a direct tendency to a breach of the peace. 4 *Bl. Com.* 150. General imputations, also, on a body of men, though no individuals are pointed out, are indictable. 2 *Barnard*, 138. 166. And a malicious defamation of a *deceased* person, if published with intent to vilify his memory and injure his posterity, is indictable as a libel. *R. v. Topham.* 4 *T. R.* 126. Any scandal likewise expressed by indirect means, is a libel, as well as that which is expressed in direct terms: thus, to fix up a gallows against a person's door, conveys a meaning as obvious to common sense, as that which is expressed by writing or printing.—1 *Haw. c.* 73. § 2. 3. 4. So a defamatory writing expressed by the *Initials* only of a persons name, is as complete a libel, as if the whole name had been expressed. 1 *Haw. c.* 73. § 5.

3. *Of the Justification of a Libel.*

In a criminal prosecution the truth of a libel cannot be pleaded in justification, although it may be in a civil action; the ground of the criminal proceeding being the tendency of a libel to a breach of the peace. 1 *Haw. c.* 73. § 6. neither is it any justification that the libel was copied from some other publication; nor although the name of the author be given up; for the printer and publisher of a libel are equally chargeable with the offence, as the original author. *Deacon's Cr. Law.* To the above general rules, there are some exceptions in law, in which a written or printed document is held to be no libel. 1. Where it is a statement made

in the regular and proper course of a parliamentary, judicial or other lawful proceeding. 2. Where the writing is a confidential communication. 3. Where it is a fair criticism, on any literary production. 4. So, no matters exhibited in articles of the peace, or in any other proceeding in a regular course of justice, will amount to a libel; neither is a presentment of a *grand jury* to be considered as a libel. 1 *Haw. c.* 73. § 8.

4. *Of the Publication.*

No one is punishable for a libel unless he actually publish it to the world. Reading a libel in the presence of another, without any previous knowledge of its libellous qualities, does not amount to publication; but if a man, *knowingly*, lends or shows it to another, or repeats it in the presence of others, this is a publication. 1 *Haw. c.* 73.: and not only he who publishes the libel himself, but also he who procures another to publish it, is guilty of the publication. 1 *Haw. c.* 73. § 10. So, the sale of a book in a bookseller's shop, by his shopman, is *prima facie* evidence of publication by the master. 1 *Barnard*, 306. And the proprietor of a newspaper is, in like manner, *criminally* answerable for the acts of his servants in the publication of a libel, although the publication may have been without the knowledge of the proprietor. *R. v. Walker*, 3 *Esp.* 21.

5. *Of the Punishment.*

The punishment for libel is fine or imprisonment, or both. In matters of libel, justices of the peace have an original jurisdiction; and a party charged with the publication of a libel, may be held to bail by a justice of the peace, to appear at the sessions or assizes. *Butt. v. Conant*, 1 *Brod.* & *B.* 548.

Information against a Party for a Libel.

Home District, } The information and complaint of A. B. of ——
to wit. } in the home district, —— taken on oath, this —— day of —— 18—, before J. P. esq. one of his Majesty's justices of the peace for the said district. The said informant saith, that in a certain printed book (or newspaper) printed and published at —— in the said district, by one G. M. and called [*here set out the name or title of the book or paper*] the following libellous allegation is contained, of and concerning this informant, [*here insert the libellous passage, literatim*] and the said informant further saith, that he hath been informed, and verily believes the said book, &c. containing the aforesaid libellous matter, was printed and published by the said G. M. with a view to injure, vilify and defame, this

informant, and to bring him into public hatred, ridicule and contempt; wherefore he prayeth a warrant against the said G. M. and that he may be further dealt with according to law.

Sworn before me.

Recognizance to appear at the Sessions.

To be taken in the usual form. The condition of this recognizance is such, that if the said G. M. shall and do personally appear at the next general quarter sessions of the peace, [or assizes and general gaol delivery] to be holden in and for the said district, and then and there answer to a bill of indictment, to be preferred against him the said G. M. for a libel on one A. B. of —— in the said district ——, and not depart the court without leave, then this recognizance to be void.

Acknowledged before, &c.

Indictment for a Libel. (Archbold.)

Home District, to wit. } The jurors of our lord the king upon their oath present, that J. S. late of the township of —— in the county of——in the home district, schoolmaster, contriving, and unlawfully, wickedly, and maliciously, intending to hurt, injure, vilify and prejudice, one J. N. and to deprive him of his good name, fame, credit and reputation, and to bring him into great contempt, scandal, infamy and disgrace, on the —— day of —— in the —— year of the reign of our sovereign lord William the fourth, with force and arms, at the township aforesaid, in the district and province aforesaid, unlawfully, wickedly and maliciously, did write and publish, and cause and procure to be written and published, a certain false, scandalous, and malicious libel, in the form of a letter, directed to the said J. N. [*or if the publication were in any other manner, omit the words 'in the form,' &c.*] containing divers false, scandalous, and malicious matters and things, of and concerning the said J. N. and of and concerning &c. [*here insert such of the subjects of the libel as it may be necessary to refer to by the inuendos, in setting out the libel*] according to the tenor and effect following, that is to say, [*here set out the libel, together with such inuendos as may be necessary to render it intelligible*] to the great damage, scandal and disgrace, of the said J. N. to the evil example of all others in the like case offending, and against the peace of our lord the king, his crown and dignity.

LORD'S DAY.

By 1 *El. c.* 2. § 14. 24. All persons, not having reasonable excuse, shall resort to their parish church or chapel [or to some congregation of religious worship allowed by the toleration act,] on every

Sunday; on pain of 1s. to the poor for every offence. 3 *J. c.* 4. § 27. 28. to be levied by the churchwardens by distress, by warrant of one justice.

By the 1 *J. c.* 22. No shoemaker shall shew for sale any shoes, boots, &c. on the Sunday, on pain of 3s. 4d. a pair, and the value thereof; to be recovered at the assizes or sessions, one third to the king, one third to the informer, and one third to the town. § 28. 46. 50. And by the 3 *C.* 1. No carrier with any horse or horses; nor waggonman with any waggon or waggons; nor carman with any cart or carts; nor wainman with any wain or wains; nor *drovers* with any cattle, shall, by themselves or any other, travel on the Lord's day, on pain of 20s. Or if any butcher by himself, or any other for him, with his privity and consent, shall kill or sell any victual on the Lord's day, he shall forfeit 6s. 8d.; conviction to be within six months, before one justice; on view, confession, or oath of two witnesses; to be levied by the constable or churchwarden by distress; or recovered in any court of record in any city or town corporate, before the justices in sessions; to be applied to the use of the poor, except that the justice may reward the informer with part of the forfeiture, not exceeding one third. And by the 29 *C.* 2. *c.* 7. It is further enacted, that no drover, horse courser, waggoner, butcher, higgler, or any of their servants, shall travel, or come to his inn or lodging on the Lord's day, on pain of 20s. and in general, that no tradesman, artificer, workman, labourer, or other person, shall do or exercise any worldly labour, business or work, of their ordinary callings on the Lord's day, (except works of necessity and charity) and except dressing of meat in families, and dressing and selling of meat in inns or cooks shops, or victualling houses, for such as cannot otherwise be provided, on pain of 5*s.*: and also, that no person shall publicly cry, shew forth, or expose to sale, any wares, merchandizes, fruit, herbs, goods or chattels, whatsoever, on the Lord's day, (except crying and selling of milk, before nine in the morning and after four in the afternoon) on pain of forfeiting the same: and also, that no person shall use, employ, or travel, on the Lord's day, with any boat, wherry, lighter or barge, (unless allowed by a justice of the peace on extraordinary occasions) on pain of 5*s.* Conviction to be within ten days, before one justice, on view, confession, or oath of one witness; and the justice is empowered to give warrant to the constables or church-wardens, to seize the goods cried, shewed forth, or put to sale, and to sell the same, and to levy the other forfeitures by distress; to the use of the poor, and one-third to the informer; and for want of distress, the offender to be set publicly in the stocks for two hours.

By the 2 *G.* 3. *c.* 15. Fish carriages shall be allowed to pass on Sundays, whether laden or returning empty.

By the 29 C. 2. c. 7. § 6. The service of any writ, process, warrant, order, judgment or decree, on the Lord's day (except in cases of treason, felony, or breach of the peace) shall be void.

Information for travelling on the Lord's Day;—Penalty 20*s.* 29 C.2 . c. 7. § 2. (Archbold.)

Home District, } Be it remembered, that on the —— day of ——
to wit. } in the year of our Lord —— at —— in the said district, A. B. of —— in the said district, cometh before me, J. P. esquire, one of his Majesty's justices of the peace for the said district, and informeth me, that C. D. of —— in the said district, on the Lord's day, and within ten days now last past, to wit, on the —— day of —— now last past, at —— in the said district, being then and there a drover, *(drover, horse courser, waggoner, butcher, higgler, or any of their servants)* did, on the Lord's day aforesaid, (travel as such drover, or come into his inn or lodging there) contrary to the form of the statute in such case made and provided, whereby &c. (as in the form *ante*, p. 237, title "*Information.*")

Information for exercising a Trade on the Lord's Day. (Archbold.)

Commencement the same as in the last form] that C. D. of —— in the said district, on the Lord's day, and within ten days now last past, to wit, on the —— day of —— now last past, at the township of —— in the said district, being then and there of the age of fourteen years and upwards, and being then and there a tradesman, to wit, a grocer, *('tradesman, artificer, workman, labourer, or other person, whatsoever,')* did, on the Lord's day, aforesaid, do and exercise certain worldly labour, business and work, of his ordinary calling, as such grocer, as aforesaid, not being a work of necessity or charity, that is to say, that he the said C. D. did then and there (sell certain goods of him the said C. D. as such grocer, as aforesaid, to one E. F. [*or stating some other act of the tradesman, in the way of his trade, &c.*] contrary to the form of the statute in such case made and provided, whereby &c. (conclude as above).

Summons and Conviction.

See the forms given under these titles.

Warrant on the 3 *C.* 1. *and* 29 *C.* 2. *c.* 7. *to levy* 20*s. on a Carrier for travelling on the Lord's Day; which same will do* mutatis mutandis, *for the other Penalties under this Title.* (Dr. Burn.)

Home District, } To the Constable of ——
to wit. } Forasmuch as A. O. of —— in the said dis-

trict, carrier, is duly convicted before me, J. P. esquire, one of his Majesty's justices, assigned to keep the peace in the said district, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said district committed, for that he the said A. O. on the —— day of —— in the —— year of the reign of —— being the Lord's day, commonly called Sunday, with his horses, to wit, two horses into and through the said township of —— did travel, contrary to the statutes in that case made and provided, whereby he hath forfeited the sum of 20*s.* of lawful money of England: These are therefore to command you, forthwith to levy the said sum of 20*s.* by distraining the goods and chattels of him the said A. O. and if within the space of five days next after such distress by you taken, the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the sum of 6*s.* 8*d.* part of the said sum of 20*s.* to A. J. of —— yeoman, who informed me of the said offence, and that you see the remaining sum of 13*s.* 4*d.* employed according to law, returning to him the said A. O. the overplus, upon demand, the reasonable charges of taking, keeping and selling the said distress, being first deducted; and you are to certify to me, with the return of this precept, what you shall have done in the execution thereof. Herein fail you not. Given under my hand and seal, at —— the —— day of —— 183—.

MAIMING.

By the ancient law of England, he that maimed any man, whereby he lost any part of his body, was sentenced to lose the like part, *membrum pro membro;* which still is, or was lately, the law in Sweden. But this *lex talionis* afterwards went out of use, partly because the law of retaliation is, at best, an inadequate rule of punishment, and partly because (upon a repetition of the offence) the punishment could not be repeated. 4 *Bl. Com.* 206. But subsequent statutes have provided otherwise for this offence. By the 5 *H.* 4. *c.* 5. (which was passed to remedy an atrocious crime then prevalent, of beating, wounding, or robbing a man, and then cutting out his *tongue*, or putting out his *eyes*, to prevent him from being an evidence against the robber) this offence was declared to be felony. The 37 *H.* 8. *c.* 6. also directed, that if a man maliciously cut off the *ear* of any of the King's subjects, he should not only forfeit treble damages to the party grieved, but also £10 fine to the King. And by the 22 & 23 *Car.* 2. *c.* 1. called the *Coventry act*, the most severe and effectual of all these

statutes, the passing of which was occasioned by an assault on Sir John Coventry, in the street, and slitting his nose, in revenge (as was supposed) for some obnoxious words uttered by him in parliament—it is enacted, that maliciously and lying in wait to cut out or disable the tongue; put out an eye; slit the nose; cut off a nose or lip; or cut off or disable any limb or member of any person, with intent to maim or disfigure him, shall be deemed felony.

MAINTENANCE.

MAINTENANCE is an unlawful taking in hand or upholding of quarrels or suits, to the disturbance or hindrance of common right; and is not only *malum prohibitum* both by the common law and by statute, but is also accounted *malum in se*, as having a manifest tendency to oppression, by encouraging and assisting persons to persist in harrassing their neighbours with suits, which perhaps they would not venture to prosecute of their own accord. It is punishable at common law, by *fine* and *imprisonment;* and by the 32 *H.* 8. *c.* 9. with a forfeiture of £10. A court of record, also, may commit a man for an act of maintenance done in the face of the court, as for a contempt. 2 *Inst.* 212. 1 *Haw. c.* 83. § 36. There are some acts of maintenance which, under certain circumstances, are justifiable. A father; a son; or an heir apparent to a party; or the husband of an heiress apparent, may lawfully lay out money for the party to prosecute his suit. Few prosecutions are, however, now instituted for maintenance; for more persons than one are generally implicated in this offence, and then the common practice is, to indict them for *conspiracy*.

MANDAMUS.

A WRIT of *mandamus*, is a command issuing in the King's name from the court of king's bench, and directed to any person, corporation, or inferior court of judicature, within the King's dominions, requiring them to do some *particular* thing, therein specified, which appertains to their office or duty. This writ is principally used to enforce a civil or municipal right; but it issues also to the judges of any inferior court, commanding them to do justice according to the power of their office, whenever the same is delayed. It is grounded on a suggestion (by the oath of the party injured) of his own right, and of the denial of justice in the court below; whereupon, in order more fully to satisfy the court that there is a probable ground for such interposition, a rule is made, (except in some general cases, where the probable ground is

manifest) directing the party complained of to shew cause why a writ of *mandamus* should not issue; and if he shews no sufficient cause, the writ itself is issued at first in the alternative—either to do thus, or signify some reason to the contrary: to which a return or answer must be made at a certain day; and if the inferior judge, or other person to whom the writ is directed, returns or signifies an insufficient reason, then there issues, in the second place, a *peremptory mandamus*, to do the thing absolutely, to which no other return will be admitted, but a certificate of perfect obedience and due execution of the writ. If the inferior judge, or other person, makes no return, or fails in his respect and obedience, he is punishable for his contempt, by attachment. But if at the first he returns a sufficient cause, although it should be false in fact, the court of king's bench will not try the truth of the fact upon affidavits, but will, for the present, believe him, and proceed no further on the *mandamus*. But then, the party injured may have an action against him for his false return, and (if found to be false by the jury) shall recover damages equivalent to the injury sustained, together with a *peremptory mandamus* to the defendant, to do his duty. 3 *Bl. Com.* 111.

A *mandamus* to the quarter sessions will be granted, to compel them to hear and decide an appeal which they refuse to hear, on the ground of a mistaken notion of law, or an unreasonable rule as to their own practice. *R. v. Wiltshire*, 10 *East.* 404.

Manslaughter.—See *ante* title "*Homicide*," p. 223.

MARRIAGES.

By the 33 *G.* 3. *c.* 5. certain marriages previously contracted, are declared to be valid. § 3. And until there shall be five ministers or parsons of the church of England, doing duty in their parishes or places of residence in any one district, parties desirous of intermarrying, and neither living within eighteen miles of any parson or minister, may apply to a neighbouring justice, who may cause to be affixed, in some public place within each of the townships or parishes wherein the parties reside, the following notice, (fee *one shilling*):—

"Whereas A. B. of ——— and C. D. of ——— are desirous of "intermarrying with each other; and there being no parson or "minister of the church of England living within eighteen miles "of them, or either of them, all persons who know any just im- "pediment why they should not be joined in matrimony, are to "give notice thereof to E. F. esquire, of ——— one of his Majes- "ty's justices of the peace for the ——— district."

And if no valid objection shall have been made for three intervening Sundays, the magistrate may solemnize the marriage, according to the form of the church of England, and give the parties the following certificate, (fee 1*s.*):—

"Whereas A. B. of —— and C. D. of —— were desirous "of intermarrying with each other, and there being no parson "or minister of the church of England living within eighteen "miles of them, or either of them, they have applied to me for "that purpose: Now these are to certify, that in pursuance of "the powers granted by an act of the legislature of this province, "passed in the thirty-third year of his Majesty's reign, I, E. F. "one of his Majesty's justices of the peace, having caused the "previous notice by the statute required to be given, have this day "married the said A. B. and C. D. together, and they are become "legally contracted to each other in marriage."

Which certificate shall be signed by the parties, and two or more persons present at the marriage. The clerk of the peace, upon application, is required to register the said certificate—(fee 2*s.*); and such register, or an attested copy—(fee 2*s.*) shall be sufficient evidence in courts of law. § 5. The power of justices to solemnize marriages shall determine so soon as there shall be five parsons or ministers resident in any one district; and any justice of the peace pretending to perform the ceremony afterwards, shall forfeit £20. one moiety to the province, and the other to the informer.

By the 2 *G.* 4. *c.* 11. If any parson, minister or clergyman, legally authorised to solemnize marriage, shall knowingly or wilfully solemnize marriage without publication of banns, unless license of marriage be first had and obtained from some person duly authorised to grant the same; or if any justice of the peace shall knowingly solemnize marriage contrary to law; or if any person not having authority by law to solemnize marriage shall marry any persons within the same, such offender shall be guilty of a misdemeanor.—Such offence not to be cognizable at the quarter sessions; and no prosecution to be commenced after two years. § 2. In all prosecutions under this act, the proof of *legal authority* shall lie upon the defendant.

By 1 *W.* 4. *c.* 1. entitled "an act to make valid certain marriages heretofore contracted, and to provide for the future solemnization of marriage in this province," it is enacted, that it shall be lawful for any clergyman or minister of any church, society, congregation, or religious community of persons, professing to be members of the church of Scotland, Lutherans, Presbyterians, Congregationalists, Baptists, Independents, Methodists, Menonists, Tunkers or Moravians, who shall be authorised in manner here-

inafter mentioned, to solemnize the ceremony of marriage within this province between any two persons, neither of whom is under any legal disqualification to contract matrimony. § 2. No person shall be deemed a clergyman or minister of such church, society, congregation, or religious community, who shall not have been regularly ordained, constituted or appointed, according to the rites and forms of such church, society, congregation or religious community; and unless he shall be a subject of his Majesty, and shall appear before the justices, in sessions of the district, and produce proof of his ordination, constitution or appointment, and shall then and there take the oath of allegiance; and thereupon, if it shall appear to the majority of the justices then present that he has been regularly ordained, &c. they are hereby authorised and required to grant him a certificate, in the form following:—

"Be it remembered, that at the general quarter sessions of the "peace holden at ——— in and for the district of ——— on the "——— day of ——— in the year of our Lord ——— before A. B. "and others, esquires, justices of our sovereign lord the King as- "signed to keep the peace in the said district, came C. D. of ——— "who professes to be a minister or clergyman of the church, society, "congregation or religious community, (as the case may be) it "appeared to a majority of the justices that he the said C. D. "was duly ordained, constituted or appointed, (as the case may "be) a minister or clergyman of the said church, society, congre- "gation, or religious community.

"G. H. *Clerk of the Peace.* E. F. *Chairman.*"

For which certificate, the clerk of the peace shall be entitled to 5*s*. § 5. No such minister shall at any time celebrate marriage unless banns of marriage be published with an audible voice in the church or chapel or place of worship, three several Sundays, in some intermediate part of the service, or before it began, or immediately after it ended, together with the number of times of publication; or unless a marriage license shall have been obtained from the Governor. § 6. Every minister or clergyman, or justice of the peace, authorised by this act to celebrate marriage, shall, if required, give to the party a certificate; and also, once in every twelve months, return a certified list of all marriages by him solemnized, to the clerk of the peace, within that period, or since his last return, specifying the names of the parties married; the witnesses; and whether solemnized by license or banns; and shall pay to the clerk of the peace the sum of 2*s*. 6*d*. to record the same who shall record the same in the register or book required by law' to be kept by him, of marriages; and such register, or a certified copy, shall be considered, in case of death, or absence of the witnesses, a sufficient evidence thereof; and any minister, clergy-

man, or justice of the peace, neglecting to make such return, shall forfeit £40, to be recovered by action of debt in the court of king's bench, one moiety to the informer and the other to the province.

Marriage License.

Sir John Colborne, *K. C. B.*, Lieutenant Governor of the province of Upper Canada, &c. &c. &c.

Whereas his Majesty has been graciously pleased, by letters patent, under the great seal of Great Britain, to authorise me to grant licenses for the solemnization of marriages: And whereas —— are determined to enter into the holy banns of matrimony, and are desirous of having their marriage publicly solemnized; in order that such their honest desires may the more speedily have their due effect, and that they may be able to procure the same to be lawfully solemnized, without publication of banns, I do hereby, for good causes, give and grant this license of faculty, as well to them the said parties contracting, as to all or every parson or minister, duly ordained, and lawfully exercising his ministry within the said province of Upper Canada, to solemnize and perform the same: *Provided always*, that by reason of any affinity, consanguinity, pre-contract, or any other lawful cause, there be no legal impediment in this behalf, otherwise, if any fraud shall appear to have been committed, at the time of granting this license, either by false suggestions or concealment of the truth, that then this license shall be null and void, to all intents and purposes whatsoever.

Given under my hand and office seal, at —— this —— day of —— in the year of our Lord, one thousand eight hundred and thirty —— and of his Majesty's reign, the ——

By his Excellency's command.

Form of a certified list of Marriages, to be returned to the Clerk of the Peace, pursuant to the 1 *W.* 4. *c.* 1.

A list of all Marriages solemnized by me A. B. one of his Majesty's Justices of the Peace for the Home District, [or a Minister, &c. stating the particular denomination, at ——] commencing the —— day of ——, and ending the —— day of ——

Names of the parties, and their residence.	Township in which the ceremony is performed.	Date of Ceremony.	By Banns, License, or usual notice.	Names of Witnesses present.
John Thomas, of Hamilton, in the District of Gore, Gentleman,—and, Mary Griffiths, of the City of Toronto, in the Home District.	At the City of Toronto, in the Township of York.	12th Aug. 1834.	By License.	Charles Edwards, of Hamilton, Gore District, Merchant—and Richard Hughes, of the City of Toronto, Merchant.

MARRIED WOMEN.

By the 59 *G.* 3. *c.* 3. Married women above the age of 21 years, with the knowledge and consent of, and by any deed or deeds jointly with their husbands, may alien and convey their real estate to such uses as to her and her husband shall seem meet. § 2. *Provided*, that such married woman, if resident in Upper Canada, shall appear before a judge, or other person mentioned and described in the 43 *G.* 3. *c.* 5. (repealed by 1 *W.* 4. *c.* 2.) or unless such married woman, being a resident of Great Britain or Ireland, or any Colony belonging to the crown of Great Britain, shall appear before the mayor, or chief magistrate, of any city, borough or town corporate, in Great Britain or Ireland, or the chief justice, or any of the judges of the supreme court in any such Colony, and be examined by such officer touching her consent, and shall freely and voluntarily consent. § 3. Such mayor, or chief magistrate, &c. may thereupon cause a certificate to be endorsed on the deed, stating the day on which such examination was made, and signed by such mayor, &c. And by § 4. All such examinations and certificate, &c. must be made within 12 months after the execution of the deed. § 5. And the seal of the city, borough or town corporate, must be affixed.

By the 2 *G.* 4. *c.* 14. It shall be lawful for any married woman, having such real estate, to appear before the quarter sessions in the district in which she may be resident, or in cases where the party resides out of the province, then before the G. Q. sessions of any district, within 12 months after the execution of the deed, to make such acknowledgment; and the chairman may certify in like manner as by the court of king's bench, or any judge thereof.

By the 1 *W.* 4. *c.* 3. Reciting that the laws now in force were insufficient, and unnecessarily exposed purchasers to risk, from the chance of married women dying, or retracting consent after execution of the deed; it is enacted, that it shall be lawful for any such married woman, above 21 years of age, to alien and convey her real estate jointly with her husband; provided that the deed be executed in the presence of one of the judges of the king's bench, or a judge of the dictrict court, or of a judge of the surrogate court of the district where such married woman shall reside; or of two justices for such district, who shall examine such married woman apart from her husband respecting her free and voluntary consent; and shall on the day of the execution of such deed endorse the following certificate on the deed, or to the like effect:

"That on the day mentioned in the certificate, such married woman did appear before him, or them, [*as the case may be*] at the place to be named in the said certificate, and being examined

by him, or them, [*as the case may be*] apart from her husband, did appear to give her consent to depart with her estate in the deed mentioned freely and voluntarily, and without any coercion, or fear of coercion, on the part of her husband, or of any other person or persons whatsoever."

Sec. 2. And when any married woman shall reside out of the province, the deed may be executed by her in the presence of a judge of the king's bench; or of the district or surrogate court; or of two justices in any district, whose certificate shall be effectual; and it shall not be necessary for any such judge or justices to attest the deed. § 3. And where married women have heretofore conveyed their estates, but no certificate has been obtained, such certificate may nevertheless be obtained notwithstanding the 12 months have expired. § 5. The sum of five shillings to be paid for such certificate.

And see title "*Dower.*"

MILITIA.

By the 48 *G.* 3. *c.* 1. Entitled, 'an act to explain, amend and reduce to one act of parliament, the several laws now in being, for the raising and training the militia of this province.' § 1. The governor is authorised to appoint officers, which officers, shall within six months, take the oath of allegiance, at the general quarter sessions. § 2. The colonel or commanding officer of any regiment, or battalion of militia, shall specify to each captain of a company, the limits from which such company shall be enrolled. § 3. Every male inhabitant, from sixteen to sixty shall enrol his name, on the first day of training, in the division or limit in which his abode may be, and shall, at such meeting, give his name, age, and place of residence, and the place from whence he last came, if lately removed, under the penalty of 10*s.*; but no inhabitant shall be convicted, unless upon the trial it is proved, that he had been notified personally, or by leaving a verbal notice at his usual place of abode, of the time of meeting, at least six days previous thereto; and no person above fifty, shall be required to bear arms, except on the annual day of meeting, or in time of war or emergency. § 4. Notwithstanding the neglect of any person to attend and enrol himself, the captain or officer commanding the company, may enter the name of any such person coming to his knowledge, upon the enrolment of his company, and when so entered he shall be subject to militia duty and fines. § 5. The militia shall be called out on the 4th of June, annually, unless it happen on a Sunday, and then on the next day; and every person liable, but neglecting to attend, and not having leave of absence, shall be subject to the

following fines.—If an officer, 40*s.*; and if a non-commissioned officer or private, 10*s.*: but if it shall appear to the commanding officer, more convenient to review the militia at different times and in separate bodies, it shall be lawful for such commanding officer to call out a part of the militia at one time, and the remaining part at another; and at every such review, the captain or officer commanding each company, shall give to the colonel, or the next senior officer, fair written rolls of their companies, to be returned by him to the governor, within 14 days after the 4th of June, under the penalty of £5. for each captain or commanding officer of a company, and £10. for each colonel or commanding officer of a battalion, for each neglect or refusal. § 6. The governor is authorised to appoint an adjutant general. § 7. Captains to draw out their companies not less than twice, nor more than four times a year, (giving six days notice) to inspect arms and train: and every officer neglecting to attend, shall forfeit 40*s.*, and privates 10*s.*, for every such neglect. § 8. In time of war, rebellion, or other emergency, the governor may call out any of the companies, and march them from their respective counties to any part of the province, to serve with other militia, or with his Majesty's forces; any person refusing to obey, or absconding, or neglecting to repair to the place ordered, being a commissioned officer, shall forfeit £50. and be held unfit to serve in any military capacity; and if a non-commissioned officer or private, £20., and in default of payment, be committed to the gaol for not less than six, nor more than twelve calendar months, except such neglect arose from sickness or leave of absence. No part of the militia so called out shall continue on actual service for more than six months at one time, and none over fifty years shall be so called out, unless the whole of the militia shall be embodied; provided, also, that no part of the militia shall be obliged to march out of the province, except for the assistance of Lower Canada, if invaded, or in a state of insurrection, or in pursuit of an enemy invading this province, or for the destruction of any vessel, or any depot or magazine, or for the attack of an enemy embodying or marching to invade this province, or for the attack of any fortification to cover such invasion. § 9. The governor, or in case of emergency, the colonel, may call out detachments of the militia, and limit or fix the number of men in such detachments, and direct any officer, under the warrant of a magistrate, to impress carriages and horses, as the service may require, the owner receiving 7*s.* 6*d.* per day, for the use thereof, (increased to 12*s.* 6*d.* per day, by the 53 *G.* 3. *c.* 10.) and that when only part of the militia is called out, any person may send an able substitute. § 10. Militia to be formed into regiments of not more than ten, nor less than eight companies, such

companies to consist of not more than fifty, nor less than twenty men, with one colonel, one lieutenant colonel, and one major; and when the number of companies shall be under eight, and not less than five, such militia shall be formed into a battalion, and the field officers shall be, one lieutenant colonel, and one major, only; and to each company there shall be one captain, one lieutenant, and one ensign. § 11. To every regiment or battalion, there shall also be one adjutant, and one quarter master, and every field officer commanding a regiment or battalion, shall fix the number of serjeants to each company, to be nominated by the captain, who shall return their names to the field officer, for approval. Sec. 12. In counties where there shall not be a sufficient number to form a regiment or battalion, the militia shall be formed into independent companies, of not more than fifty, nor less than twenty men, with one captain, one lieutenant, and one ensign, to each company, with power for the governor to join such independent companies together, and form a regiment or battalion, or to incorporate them with any other regiment or battalion whose number shall not exceed the proper number of companies. Sec. 13. Every non-commissioned officer or private, refusing to obey the lawful orders of his superior officer, when on duty, or who shall quarrel with, or insult by words, or otherwise, any officer or non-commissioned officer, shall, for every such offence, forfeit and pay a sum not exceeding £5. nor less than 10*s*. at the discretion of the justices. Sec. 15. Penalty of £5. imposed on every person who shall barter, sell or buy, any arms or equipments delivered from the King's stores, or who shall destroy the same, on conviction by one witness before two justices, and in default of payment, commitment for any time not exceeding two months, unless the same shall be sooner paid. Sec. 16. While militia is in actual service, any officer, non-commissioned officer, or private, using traitorous or disrespectful words against the king or any of the royal family, if a commissioned officer, and convicted before a court martial, shall be cashiered; and if a non-commissioned officer or private, shall suffer such sentence as such court martial shall award. Sec. 17. Any officer, non-commissioned officer, or private, behaving with contempt or disrespect to the governor, shall be punished according to the nature of his offence, by a general court martial. Sec. 18. Any officer, &c. who shall begin, excite, cause, or join in any mutiny or sedition, in the regiment, detachment, troop or company, to which he belongs, or in any other, shall suffer death, or such other punishment as by a general court martial shall be awarded; and by sec. 19. any officer, &c. not endeavouring to suppress the same, or give information of any coming to his knowledge, shall be punished as a general court martial may award. Sec. 20. De-

sertion to the enemy shall be punished by death, or such other punishment as shall be awarded by a general court martial. Sec. 21. Any non-commissioned officer or militia man, being absent without a furlough, shall be punished at the discretion of a general court martial; and any officer receiving, or not confining him as a deserter, and giving notice to the regiment, shall be cashiered by a general court martial. Sec. 22. Any officer, &c. advising or persuading any officer or militia man to desert, shall suffer such punishment as shall be awarded by a general court martial. Sec. 23. to 26. relate to court martials. Sec. 26. Exempts from militia duty, except in time of actual service, the following persons, viz.: the judges of the king's bench, and clergy; the members of the legislative and executive councils, and their respective officers; the members of the house of assembly, and the officers thereto belonging; the attorney general, and solicitor general, secretary of the province, and all other civil officers appointed under the great seal; as well as all magistrates, sheriffs, coroners, halfpay officers, militia officers, (having served in any part of his Majesty's dominions, and not removed for any offence, or obtained leave to resign), the surveyor general, and his deputies; seafaring men, actually employed, physicians, surgeons, masters of public schools, ferrymen, and one miller to every grist-mill. Sec. 27. Which relates to the exemption of quakers, menonists, and tunkers, is repealed by the 4 *W.* 4. *c.* 13. (see post) Sec. 28. The governor, in time of war, may employ the militia either upon land, or upon the lakes, rivers and communications. Sec. 29. Persons to serve on detachments shall be taken from a roster or list to regulate the turn of duty, to be first formed by ballot; and the commanding officer shall give notice to the persons of their turn of duty. Sec. 30. Governor may divide detachments, and appoint them to serve on board vessels, boats, or batteaux, upon the lakes, &c. with great guns or artillery, as well as small arms, and to be stationary in any of the creeks or harbours of the said lakes, &c. Sec. 31. The governor may embody troops of cavalry. Sec. 32. Detachments called out, if required, may be detained on such service six months at one time, and no longer. Sec. 33. If such detachments cannot be replaced by an equal number, every detachment to be relieved shall ballot for the deficiency. Sec. 24. When any person shall have been convicted of any offence against this act, and shall refuse to pay the fine, it shall be lawful for the justice or justices who convicted the offender, to commit him to the common gaol of the district until such fine be paid, with the charges of conviction; such commitment not to exceed one calendar month, unless otherwise provided by this act. Sec. 33. Non-commissioned officers late in his Majesty's service, not obliged to serve in any inferior station

in the militia, unless reduced according to law. Sec. 36. Imposes a penalty of 40*s.* on commissioned officers, and 10*s.* on non-commissioned officers and privates, absent from any review or exercise, without leave. Sec. 37. A penalty of 40*s.* on every serjeant of militia neglecting to warn militia men of the company to appear at the place of enrolment or exercise. Sec. 38. Every militia sergeant shall be exempt from serving as constable. Sec. 39. Wounded to be taken care of. Sec. 40. Provides, that when any person shall be summoned before two justices, for having *neglected or refused* to do such things as by this act are required of him to be performed, and shall, upon the oath of one witness, be duly convicted of such offence, he shall pay the charges of such conviction, and that all fines, penalties and forfeitures, by this act imposed, in default of payment, shall be levied by distress and sale, and within two months after recovery, shall be transmitted by the justices to the colonel, or in his absence, the next senior officer; to be applied towards the expenses of the regiment, and the overplus in prœmiums to the persons who shall make the best shot at a target upon days of training. Sec. 41. No conviction under this act, shall be removed by certiorari, provided, that the fines, &c. shall not exceed £20. Sec. 42. Actions to be brought within six months, and the defendant may plead the general issue, and give special matter in evidence, and be entitled to treble costs.

By the 49 *G.* 3. *c.* 2. When the militia are on a march, each and every householder shall furnish them, when required, with houseroom, fire, and utensils for cooking; and in case of invasion or emergency, the commanding officer may direct any officer having first obtained a magistrate's warrant, to impress such horses, carriages and oxen, as the service may require; for the use of which the owner shall receive 7s. 6d. per day, for every cart or carriage with two horses or oxen, (increased to 12s. 6d. a day by the 53 *G.* 3. *c.* 10.) and for a driver 2s. 6d. per day. Sec. 2. The militia shall be billetted by a justice in the manner most convenient to the inhabitants, under the penalty of 40s. by any householder refusing. Sec. 3. The number billetted in cantonment shall not exceed six upon each householder, who shall receive the same under the penalty of 40s., two justices may relieve any householder considering himself aggrieved. Sec. 4. The like power given to impress carriages, &c. while in cantonment, as on a march. Such carriages not to proceed further that 30 miles, unless others cannot be immediately had to replace them. Sec. 5. And in cases of emergency, the owners of boats or other craft, shall furnish the same, at the rate to be allowed by a justice, under the penalty of £5. Sec. 6. Penalties to be recovered by distress and sale, upon

confession or the oath of one witness; one-half to the informer, the other to the province.

By stat. 50 *G.* 3. *c.* 11. and 51 *G.* 3. *c.* 7. various provisions were made relative to Menonists, Tunkers and Quakers, and the disposal of their goods when seized under any distress for militia fines; but these acts are now become inoperative by the 4 *W.* 4. *c.* 13. *(see post,)* by which the original exemption contained in the 48 *G.* 3. *c.* 1. is repealed, and other provisions made in lieu thereof, in favor of these parties.

By the 56 *G.* 3. *c.* 31. It is enacted that nothing in the third clause of the 48 *G.* 3. shall oblige any person not being a natural born subject to enrol himself in the militia. Sec. 5. The sheriff and treasurer may retain 3 per cent on all fines received by them, if transmitted to the receiver general within three months. Sec. 6. All fines or exemption money collected by magistrates, commanding-officers; sheriffs; treasurers; or other persons, shall within 3 months be transmitted to the receiver general, certified on oath before one justice, under the penalty of £100, to be recovered in any of his Majesty's courts of this province, by action of debt, bill, plaint or information.

The 2 *G.* 4. *c.* 3. Which among other provisions, altered the annual training day of the militia, from the 4th of June to the 23rd April, being a temporary act only for four years, has been allowed to expire, consequently with it all the provisions therein contained as to any future operation.

By the 4 *G.* 4. *c.* 5. Sec. 2. Militia companies shall in future consist of not more than 80 nor less than 30 private men. Sec. 3. And it shall be lawful for the governor to form artillery companies, when and where he may think fit. By 4 *G.* 4. *c.* 27. £200 per annum is granted for the salary of the adjutant general.

By the 4 *W.* 4. *c.* 13. which repeals the 27 sec. of the 48 *G.* 3, It is by Sec. 2. enacted that Quakers, Menonists or Tunkers, shall not be compelled to serve in the militia, who shall produce a certificate thereof, signed by the clerk of the society; provided that every such person from the age of 16 to 60, shall, on or before the 1st of February in every year, give in his name to the assessor of the township, and shall pay a commutation of 10s. per annum in time of peace, and £5 in time of invasion or insurrection; or when the militia shall be called out on actual service. Sec. 3. The clerk of the peace in each district, is required to annex a column to each assessment roll of each township or place, with the names of such Quakers, &c., and the sum, so to be paid opposite thereto; which sums the collector is empowered to collect in the same manner as he is authorised by law to collect any ordinary assessment; such collector shall pay the same to the treasurer of

the district, to be expended in the township where levied, in aid of the road assessment.

By Sec. 4 The treasurer shall pay such monies to the order of the road master of the division; and by Sec. 5. the path-master shall apply the same in the improvement of the roads and bridges, and render an account upon oath to the sessions. Sec. 6. Quakers producing surgeons certificate of inability to perform militia service, and aliens, shall be exempt from commutation money.

Information against a Militia Man, for not enrolling his name on the first day of training. 48 *G.* 3. *c.* 1. § 3. *Penalty* 10*s.*

Home District, } Be it remembered that on the —— day of ——
to wit. } in the year of our Lord —— at —— in the said district, A. B. of —— in the said district, —— personally cometh before us, J. P. esq., and Q. R. esq., two of his Majesty's justices of the peace for the said district, and informeth us —— that on the —— day of —— G. H., late of —— in the said district, yeoman, being of the age of sixteen years and upwards, and under the age of sixty, and (being a person deemed capable by the laws of this province of bearing arms), was duly notified and warned to attend and enrol his name as a militia man, on the first day of training, of a certain company of the —— regiment of —— militia, under the command of C. D. esq., the captain of the said company, to wit, on the —— day of —— at the township of —— in the said district; (being within the division for training the said company, in which the abode of the said G. H. then was,) and that the said G. H. having been so notified, and warned as aforesaid, did not attend and enrol his name as such militia man, in the said company, on the said first day of training, at the township aforesaid, in the district aforesaid; contrary to the form of the statute in such case made and provided; whereby and by force of the statute in such case made and provided, the said G. H. hath forfeited for his said offence, the sum of *ten shillings*; wherefore the said A. B. prayeth the consideration of us, the said justices in the premises, and that the said G. H. may be convicted of the offence aforesaid, and that he may be summoned to appear before us, and answer the premises, and make his defence thereto.

Exbibited before us. A. B.

N. B.—This information may be laid by any indifferent person, and should not be upon oath; at the hearing, the facts will be proved by adequate testimony on *oath*.

Against a Serjeant for not warning a Militia-man. Penalty 40. § 37.

Commencement as before.] That A. K. late of the township of —— in the district aforesaid, yeoman, being a serjeant in a certain

company of the —— regiment of—— militia, under the command of C. D. esq. the captain of the said company, and having been ordered and commanded by the said C. D. esq. as such captain as aforesaid, to warn the militia men of the said company to appear at the place of enrolment [or exercise] to wit, at the township of ——, in the district aforesaid, on the —— day of ——, did neglect and refuse to warn G. H. of the same township, yeoman, to appear and enrol himself as a militia man in the said company, according to the statute in that behalf, [he the said G. H. then being a person deemed capable, by the laws of the province, of bearing arms,] contrary to the &c. *(conclude as before.)*

Against a Militia man for being absent at training on the fourth of June. Penalty 10*s.* § 5.

Commencement as before.] That G. H. of the township of —— in the said district, yeoman, being a person liable, by the laws of this province, to serve as a private in the militia of this province, and not having leave of absence, or other lawful excuse, did neglect and refuse to attend as such private militia man in the —— regiment [*or battalion*] of —— militia, at the township of —— in the said district, on the fourth day of June, in the year aforesaid, to be reviewed and exercised with such regiment [*or battalion*] at the time and place aforesaid, contrary to the form of the statute &c. *(conclude as before.)*

For being absent at an Inspection of Arms, &c. Penalty 10*s.* § 7.

Commencement as before.] That G. H. of the township of —— in the said district, yeoman, being a militia man duly enrolled as a private in a certain company of the —— regiment of militia, under the command of C. D. esq. the captain of the said company, and having been duly notified and warned to attend, at the time and place, and for the purpose hereinafter mentioned, did neglect and refuse to attend, on the —— day of —— at the township of —— in the said district, upon the occasion of the said company being then and there drawn out for the inspection of their arms, and to be instructed in their duties, he the said G. H. not having leave of absence, or other lawful excuse, contrary to the form of the statute, &c. [*conclude as before*].

For Insulting Conduct when on Duty.—Penalty not exceeding £5. *nor less than* 10*s.* § 13.

Commencement as before] that G. H. late of the township of—— in the said district, yeoman, being a militia man, duly enrolled as a private, in a certain company of the —— regiment of militia,

under the command of C. D. esquire, the captain of the said company; and while employed on militia duty, as such private, as aforesaid, to wit, on the —— day of —— at the township of —— in the said district, did *(refuse to obey the lawful orders of the said C. D. his superior officer, or did insult, by abusive words, the said C. D. his superior officer,)* he the said C. D. then and there being in the due execution of his duty, as such superior officer, contrary to the form of the statute, &c. [*conclude as before*].

For withdrawing from Exercise without Leave.—Penalty, 10*s*. § 36.

That G. H. [*as before*] on the —— day of —— at the township of —— in the said district, and while the said regiment was being reviewed and exercised, did unlawfully absent and withdraw himself, from the place of review and exercise, aforesaid, without leave, contrary to the form of the statute, &c. [*conclude as before*]

Against a Militia Man for not joining his Company in time of War, &c.—Penalty £20. § 8.

Commencement as before] that G. H. &c. [*as before*] during the present war between &c. *(or the rebellion, or other pressing exigency, as the case may be)* having been duly ordered and commanded to repair to a certain place, to wit, the township of —— in the said district, on the —— day of —— then and there to join the said company, did unlawfully neglect and refuse to obey such order and command, and did neglect to repair to the place aforesaid, at the time, and for the purpose aforesaid, *(or did abscond as the case may be)* he the said G. H. not having leave of absence, or other lawful excuse for so doing, and not having provided a proper substitute, contrary to the statute, &c. *(conclude as before.)*

For Selling Arms, &c.—Penalty, £5. § 15.

Commencement as before] that G. H. &c. [*as before*] on the —— day of —— at the township of —— in the said district, did unlawfully sell and deliver to one O. P. one musket, of the value of —— the said musket being part of the arms and equipments then lately before delivered to him the said G. H. out of his Majesty's stores, contrary to the form &c. [*conclude as before.*]

Against a Party for Buying the same.—Penalty, £5. § 15.

Commencement as before] that S. R. on the —— day of —— at the township of —— in the said district, labourer, did unlawfully buy, have and receive, of and from one G. H. (he the said G.

H. then and there being a militia man, duly enrolled in the —— company of the —— regiment of militia, under the command of C. D. esquire, the captain of the same company) one musket, of the value of —— the same being part of the arms and equipments then lately before delivered to him the said G. H. out of his Majesty's stores, contrary &c. [*conclude as before.*]

Summons on the preceding Informations.

Home District, } To G. H. of —— in the said district, yeoman;
to wit. } Whereas you have this day been charged before us, C. D. esq., and E. F. esq., two of his Majesty's justices of the peace, for the said district; for that you &c., [*here set forth the particulars stated in the information,*] these are therefore to require you to appear before us at —— in the said district, on —— next, the —— day of —— at the hour of —— in the forenoon of the same day, to answer to the said charge, and to be further dealt with according to law. Herein fail you not. Given under our hands and seals, the —— day of —— in the year of our Lord 183—.

The Conviction,

Should be made out according to the form required by the 2 *W.* 4. *c.* 4. See *ante* title '*Conviction,*' p. 139.

Commitment, on refusal to pay the Penalty of £5. under § 15 *&* 34.

Home District, } To the constable of —— in the said district, and
to wit. } to the keeper of the common gaol at Toronto, in the said district. Whereas S. R. late of the township of —— in the said district, labourer, was on this day duly convicted before us, C. D. esq. and E. F. esq. two of his Majesty's justices of the peace for the said district, for that he the said S. R. on the —— day of —— &c. [*here state the particulars relative to the purchase of arms, &c. as laid in the information*] against the form of the statute in that case made and provided: and we the said C. D. and E. F. thereupon adjudged the said G. H. for his said offence, to pay the sum of *five pounds*, according to the statute in that behalf: and whereas, the said C. D. being so convicted, as aforesaid, and being now required to pay the said sum of *five pounds*, and also the sum of —— being the reasonable charges attending such conviction, and by us also adjudged to be paid by him, hath not paid the same, or any part thereof, but herein hath made default:— These are therefore to command you the said constable, to take the said S. R. and him safely to convey to the common gaol at Toronto, aforesaid, and there to deliver him to the said keeper

thereof, together with this precept; and we do hereby command you the said keeper of the said common gaol, to receive the said G. H. into the said gaol, there to imprison him for the space of &c. *(not exceeding one calendar month)* days, unless the said sums shall be sooner paid; and for your so doing this shall be your sufficient warrant. Given under our hands and seals, &c.

N. B.—The power of *commitment* is limited by the 34th sec. to *offences* against the act. The 40th sec. provides another remedy for recovering penalties, against any offender *neglecting or refusing to do such acts as by this act are required*, viz., by distress and sale only. In such cases therefore, it would be wrong to commit.

Distress Warrant, under § 40.

Home District, } To the constable of—— in the said home district.
to wit. } Whereas G. H. of—— in the said district, yeoman, is duly convicted before us, C. D. esq. and E. F. esq. two of his Majesty's justices of the peace for the said district, for that he the said G. H. being a person deemed capable of bearing arms, &c. [*here recite the conviction, and conclude*] contrary to the form of the statute in such case made and provided, whereby he hath forfeited the sum of ten shillings: These are therefore to command you, forthwith to levy the said sum of ten shillings, by distraining the goods and chattels of him the said G. H. and if within the space of —— days *(not less than four, nor more than eight days, by 27 G. 2.)* next after such distress by you taken, the said sum shall not be paid, together with the reasonable costs and charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the said sum of ten shillings into the hands of us the said justices, to be disposed of according to law, returning unto him the said G. H. the overplus, on demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted; and you are to certify to us, the said justices, with the return of this precept, what you shall have done in the execution hereof. Given under our hands and seals, &c.

N. B.—As the act does not expressly authorise the levying of the *costs*, as well as the penalty by distress and sale, it will be proper to make out separate forms for recovering the costs, pursuant to the 18 *G.* 3. *c.* 19. See title "*Costs*," p. 141.

Warrant to impress Baggage-Waggons.

Home District, } To the Constable of ——
to wit. }

By virtue of an order from ——, colonel and commanding officer of the —— regiment of —— militia, this day brought and shewn unto me, J. P. one of his Majesty's justices of the peace for the said district, by —— lieutenant, in captain ——

company of the said regiment of militia, you are hereby required to provide —— sufficient carriages and teams, with able men to drive the same, within your constablewick, whereby to remove the arms, cloathes and accoutrements, of the said company, on their march from —— to —— in the said district; and with them you are to appear at —— aforesaid, to-morrow, precisely at —— o'clock in the morning. Herein fail you not, as you will answer the contrary at your peril.

Given under my hand and seal, at —— in the said district, the —— day of —— in the year of our Lord ——.

MILL-DAMS.

By the 9 *G.* 4. *c.* 4. Every owner or occupier of any mill-dam, legally erected, or where lumber is usually brought down the stream on which such mill-dam is erected, or where salmon or pickerel abound therein, in this province, who shall neglect to construct and erect a good and sufficient apron to his or their dam, as hereinafter set forth, shall, for such offence, yearly, and every year, forfeit and pay £25.; one moiety of which shall go to the king, for the use of the province, and the other to the party who shall sue in any court of record.

Sec. 2. Every such apron shall be erected and constructed in the following manner, viz.,—such apron shall not be less than 18 feet wide, by an inclined plane of 24 feet 8 inches, to a perpendicular of 6 feet, and so, in proportion to the height, where the width of the stream will admit, and where such stream or dam is less than 15 feet wide, the whole dam shall be aproned in like manner, with the same inclined plane.

MILLERS.

By 32 *G.* 3. *c.* 7 No miller shall demand, take or receive, more than a twelfth share or part for grinding and bolting of grain, under the penalty of £10. Quebec currency; one moiety to the king, and the other to the person that shall sue for the same in any court of record. § 3. No miller shall be answerable for the loss of any bag of grain or flour, unless the initials of the christian and surname of the owner be marked thereon, and such mark of distinction previously communicated and made known to the said owner or occupier, or his servant attending the mill. See also, title '*Flour*,' p. 172.

MISDEMEANOR.

The word misdemeanor, in its usual acceptation, is applied to all those crimes and offences for which the law has not provided a par-

ticular name; and they may be punished according to the degree of offence, by fine or imprisonment, or both. 3 *Burns' Jus. tit. Misdemeanor. Russell, on Cr. and Misd.* 43. A misdemeanor is, in truth, any crime less than a felony, and the word is generally used in contra distinction to felony, misdemeanors comprehending all indictable offences which do not amount to felony. 4 *Bl. Com.* 5. *Note* 2. All disturbances of the peace, oppressions, misbehaviour by public officers, and all other misdemeanors whatsoever, of a public evil example, against the common law, may be indicted. 2 *Haw. P. C.* 25. § 4. And whatever openly outrages decency, and is injurious to public morals, is a misdemeanor at common law. 4 *Bl. Com.* 65. (n) 13 *Ed.* And wherever a statute *forbids* the doing of a thing, the doing it wilfully, although without any corrupt motive, is indictable as a misdemeanor. *R. v. Sanisbury*, 4 *T. R.* 457. So, if a statute *enjoin* an act to be done, without pointing out any mode of punishment, an indictment will lie for disobeying the injunction of the legislature. *R. v. Davis, Say.* 133. Where a statute making a new offence, only inflicts a forfeiture, and specifies the remedy, an indictment will not lie. *R. v. Wright*, 1 *Burr.* 543. The true rule is stated to be this—Where the offence was punishable by a common law, proceeding before the passing of a statute which prescribes a particular remedy, by a summary proceeding, then either method may be pursued, as the particular remedy is *cumulative*, and does not exclude the common law punishment; but where the statute creates a new offence, by prohibiting and making unlawful, any thing which was lawful before, and appoints a particular remedy against such new offence, by a particular method of proceeding, such must be pursued, and no other. *Russ. Cr. Misd.* 49.

Every attempt to commit a felony is a misdemeanor, and, in general, an attempt to commit a misdemeanor, is an offence of the same nature. *R. v. Scofield, Cald.* 397. So, also, an incitement or solicitation to commit a crime, is a misdemeanor; as in the case of one Higgins, who was indicted for having incited and solicited a servant to steal his master's property. The servant was honest, and informed his master, and no theft was committed. Higgins was found guilty, and sentenced by the court to two years imprisonment, and to stand once in the pillory. Lord *Kenyon* observing, that the bare solicitation to commit a crime was a misdemeanor, though the crime was not committed. *R. v. Higgins*, 2 *East.* 5.

MISPRISION OF FELONY.

Misprision of felony, is the concealing of a felony which a man knows, but never consented to, for if he consented, he is either a

principal or accessory in the felony, and consequently guilty of misprision of felony, and more. 1 *H. H.* 374. The punishment of misprision of felony in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the king's pleasure, by the stat. 3 *Edw.* 1. *c.* 9. If any person will save himself from the crime of misprision of felony, he must discover the offence to a magistrate, with all the speed he can. 3 *Inst.* 140.

MONEY.

By the 36 *G.* 3. *c.* 2. The following gold and silver coins shall pass current, and be deemed a legal tender, viz., the British guinea, weighing 5 dwts. 6 grs. Troy, at £1. 3s. 4d.; the johannes of Portugal, weighing 18 dwts. Troy, at £4.; the moidore of Portugal, weighing 6 dwts. and 18 grs. Troy, at £1. 10s.; the American eagle piece, weighing 11 dwts. 6 grs. Troy, at £2. 10s.: and of silver coins,—the British crown, at 5s. 6d.; the British shilling, at 1s. 1d.; the Spanish milled dollar, at 5s., equal to 4s. 6d. sterling; the Spanish pistareen, at 1s.; the French crown, coined before 1793, at 5s. 6d.; the French piece of 4 livs. 10 sols. Tournois, at 4s. 2d.; the French piece of 36 sols. Turnois, at 1s. 8d.; the French piece of 24 sols. Tournois, at 1s. 1d.; the American dollar, at 5s.; and all the higher and lower denominations of the said gold and silver coins shall also pass current, and be a legal tender, in the same proportions. § 3. And the counterfeiting, or importing any such counterfeit money, shall be felony: and by § 4. Any person guilty of knowingly altering the same, shall suffer one year's imprisonment, and be set in the pillory for one hour; and for a second offence be guilty of felony. § 5. Every person importing such base coin, to sell or pass away, shall forfeit the same. § 6. And such coin may be seized by any person having a justice's warrant, and shall be broken or defaced in open court, after being found to be counterfeit, or before a justice; and one moiety shall go to the king, for the use of the province, and the other to the informer. § 7. No tender in copper money shall be legal, beyond one shilling. § 9. Any person to whom any gold, silver or copper money, shall be tendered in payment, and shall suspect the same to be false or counterfeit, may cut, break or deface the same; and if found to be counterfeit, the person tendering the money shall bear the loss; but if found to be good and lawful money, then the person defacing the same shall receive it at the rate it was coined for. § 10. And any question arising thereon, shall be determined by one justice, who may summon three indifferent persons, in case of doubt, whose opinions, or the majority,

shall be final. § 11. Counterfeit coin produced in any court of justice, shall, by order of the judge, be cut in pieces in open court, or in the presence of a justice, and delivered to the owner.

By 7 *G.* 4. *c.* 4. The following coins are raised to a higher value, and are declared to pass current and be a legal tender, as follows:—the British crown, at 5s. 9d.; the British shilling, at 1s. 2d.; and that all the higher and lower denominations of the said (British) silver coins shall also pass current and be a legal tender, in the same proportion. § 3. The sum of 17s. 4d. British silver and copper money, shall pass as equivalent to 20s. currency.

By the 11 *G.* 4. *c.* 6. British coins depreciated $\frac{1}{25}$ shall not be legal money. § 2. The Spanish pistareen, French crown, French piece of 4 livers 10 sols, the French piece of 36 sols, and all the higher and lower denomination of the said silver coins shall no longer be a legal tender.

MURDER.—See ante title "*Homicide*," p. 223.

MUTE.

BY the 3 *W.* 4. *c.* 4. If any person, being arraigned, upon any indictment for treason or felony, shall stand mute of malice, or will not answer directly to the indictment, it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty," on behalf of such person, which shall have the same effect as if such person had pleaded the same.

NEW-YORK CURRENCY.

BY the 2 *G.* 4. *c.* 13. It is enacted, that from the 1st of July 1822, no interest or costs shall be recovered on any sums expressed in New-York currency, nor any books of account given in evidence, unless expressed in provincial currency.

NUISANCE.

NUISANCES are of two kinds—*public* and *private*. A public, or common nuisance, is an offence against the public, either by doing a thing which leads to the annoyance of all the King's subjects, or by neglecting to do a thing which the common good requires. 1 *Haw. c.* 75. § 1.; and is an indictable offence.

A private nuisance, is anything done to the hurt or annoyance of the lands, tenements or hereditaments of another, as by building a house so near to a neighbour's as to stop his lights, or shoot the rain-water upon his house. 3 *Bl. Com.* 216. This is not an

indictable offence, but only the subject of a civil action, in which the party may recover damages for the injury.

At the same time, if a private individual sustain a special grievance, arising out of the common injury, he has a right of action for the particular damages occasioned to him, notwithstanding the nuisance may affect all the King's subjects. 3 *Bl. Com.* 219.

What is a Public Nuisance.

The offending qualities of a nuisance are, in general, smell, noise, danger or obstruction; and the existence of it as a *public* nuisance, depends upon the *number* of persons annoyed by it. 1 *Burr.* 337. All trades and manufactures which are set up in a town, and occasion inconvenience to the whole neighbourhood, or which are carried on so near to a *public highway* as to cause the same inconvenience or danger to persons lawfully passing along it, may be indicted as public nuisances. But where a person sets up a noxious trade remote from human habitations and public roads, and new houses are afterwards built, and new roads constructed near it, the party, in such case, is not guilty of nuisance; for the public cannot, by their own act of coming to settle in the neighbourhood, make that a nuisance which was not so before—on the principle of "*volenti non fit injuria.*" *R. v. Cross*, 2 *C. & P.* 483. Yet, if the trade afterwards become more noxious, he may be indicted for the additional nuisance. *R. v. Watts, M. & M.* 281. To constitute a nuisance proceeding from a noxious trade, it is not necessary, as Lord Mansfield has observed, that the smell should be *unwholesome;* it was enough if it rendered the enjoyment of life and property *uncomfortable.* *R. v. White*, 1 *Burr.* 333. To make *candles* in a town, by boiling *stinking stuff* which annoys the whole neighbourhood with stenches, is also a common nuisance. *Matthews v. Carey*, 3 *Mod.* 137. 1 *Haw. c.* 75. § 10. So, if a *brew-house*, or a *glass-house*, cannot be carried on without greatly annoying the neighbourhood, it may be indicted as a nuisance. 2 *Haw. c.* 75. § 10. The keeping of hogs in a town, is not only a nuisance by statute, (2 *W. & M. sess.* 2. *c.* 3. § 20.) but also at common law. *R. v. Wigg*, 2 *Ld. R.* 1163. So also, to steep stinking skins in water near a highway, and also near several dwelling-houses, by which the air is corrupted, is the subject of an indictment. *R. v. Pappineau*, 1 *Str.* 686. Making great noises in the night with a *speaking-trumpet*, to the disturbance of the neighbourhood, has been also decided to be a nuisance. *R. v. Smith*, 1 *Str.* 764. So, to keep dogs, which make noises in the night, seems to be an indictable offence. 2 *Chit. Crim. L.* 647. This, however, must be understood only where a whole neighbourhood is disturbed by them, otherwise it will only be a *private*

nuisance; for where the noise made by a *tinman*, in carrying on his trade, only affected the inhabitants of three houses, and it appeared that by shutting the windows, the noise was in a great measure prevented, it was held that the indictment could not be supported, as the annoyance was, if any thing, a *private* nuisance. *Rex. v. Lloyd*, 4 *Esp.* 200. All disorderly inns or ale-houses, bawdy-houses, and gaming-houses, are also public nuisances. 1 *Haw. c.* 75. § 4. 4 *Bl. Com.* 167. So, whatever outrages *decency*, and is injurious to public morals, is a common nuisance, and indictable as a misdemeanor. 1 *Haw. c.* 5. § 4. 4 *Bl. Com.* 65. *n.* Any thing, also, which is productive of imminent danger, or which causes *reasonable terror* to the inhabitants of a neighbourhood, may be considered as a public nuisance. Thus, to erect *gunpowder mills*, or magazines, in or near to a town, or to put on board of a ship a quantity of gunpowder, without giving notice, is indictable as a nuisance. *R. v. Williams*, 4 *Burn*, 758.

By 10 *W.* 3. *c.* 7. making, selling, or exposing to sale, any *fireworks*, or throwing or firing them into any public street or highway, is declared to be a common nuisance. So, to let a fierce *mastiff* or *bull-dog*, that is used to bite people, go about unmuzzled, to the danger and terror of the neighbourhood, is also a common nuisance; and the owner may be indicted for suffering him to go at large. 4 *Burn's J.* 578. So, for a person affected with an infectious disorder to go or be carried about in the highways and other public places, is an indictable offence. Accordingly, where the defendant was in the habit of carrying her child, while infected with the *small-pox*, along a highway, and near to houses, this was held to be a common nuisance, and indictable as such. *R. v. Vantandillo*, 4 *M. & S.* 73. So, where a surgeon and apothecary was indicted for *inoculating* children with the small-pox, and while they were sick of it, unlawfully and injuriously causing them to be carried along the public street, it was objected that the defendant in this case was, by profession, a person qualified to inoculate with this disease, and that the causing the children to be carried along the street was no more than his directing his patients to attend him for advice, instead of visiting them, or prescribing what he might deem essential to their recovery—air and exercise. It was held that though *inoculation* may be practiced lawfully and innocently, yet it must be done under such safeguards as not to endanger the public health; and that the defendant, in this case, was clearly guilty of an indictable offence. *R. v. Burnett*, 4 *M. & S.* 272. It is also a public nuisance for any common dealer in provisions to sell *unwholesome* food, or to mix noxious ingredients in any thing made and supplied for the food of man. With respect to nuisances by

the obstruction in highways and rivers, see ante "*Highway*," p. 199.

Of the Remedy, by Abatement and Indictment.

Any one may pull down, or otherwise destroy, a common nuisance—as, a new gate or fence erected across a highway. 1 *Haw. c.* 75. § 12. But, if there is no pressing necessity for the exercise of this immediate remedy in abating the nuisance, the better way, in order to prevent a breach of the peace, is to proceed against the party, by indictment or presentment. No length of time will legalize a public nuisance. *Per L. Ell.* 7 *East.* 199. The punishment imposed by the law upon a person convicted of a nuisance, is *fine* and *imprisonment;* but as the removal of the nuisance is of course the object of the indictment, the court will adapt the judgment to the circumstances of the case. If the nuisance, therefore, be continuing, the judgment of the court may be, that the defendant shall remove it at his own costs. 1 *Haw. c.* 75. § 14.; or the court may suspend their judgment, upon the defendant entering into recognizance to appear at an adjourned or subsequent sessions, when, if it shall appear to the court satisfactory that the nuisance has been abated, the court may impose a nominal fine only; but, if the contrary should appear to be the case, the court may then pronounce its judgment, of fine and imprisonment, or either, according to the circumstances of the case.

By the 5 *W. & M. c.* 11. § 3. If an indictment for a nuisance be removed into the king's bench, and the defendant be convicted, the court may give reasonable costs to the prosecutor.

Indictment for carrying on an offensive Trade. (Archbold.)

Home District, } The jurors for our lord the King, upon their
to wit. } oath present, that J. S. late of the township of —— in the county of —— in the home district, (labourer) on the —— day of —— in the —— year of the reign of our sovereign lord William the fourth, with force and arms, at the township aforesaid, in the county and district aforesaid, near unto divers public streets, being the King's common highway, and also near unto the dwelling-houses of divers liege subjects of our said lord the King, there situate and being, unlawfully and injuriously did (make, erect and set up, and did cause and procure to be made, erected and set up, a certain furnace and boiler, for the purpose of boiling tripe, and other entrails and offals of beasts; and that the said J. S. on the day and year aforesaid, and on divers other days and times, (*) between that day and the day of the taking of this inquisition, at the township aforesaid, in the county and

district aforesaid, unlawfully and injuriously did boil, and cause and procure to be boiled in the said boiler, divers large quantities of tripe, and other entrails and offals of beasts), by reason of which said premises, divers noisome, offensive, and unwholesome smokes, smells and stenches, during the time aforesaid, were from thence emitted and issued, so that the air then and there was, and yet is, greatly filled and impregnated with the said smokes, smells and stenches, and was and is rendered and become, and was and is corrupted, offensive, uncomfortable and unwholesome, to the great damage and common nuisance of all the liege subjects of our said lord the King there inhabiting, being and residing, and going, returning, and passing through the said streets and highways, and against the peace of our lord the King, his crown and dignity.

Second Count for continuing the Nuisance.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S. on the said ——— day of ——— in the year aforesaid, and from that day until the day of the taking of this inquisition, with force and arms, at the township aforesaid, in the county and district aforesaid, (a certain other furnace and boiler, for the purpose of boiling tripe and other entrails, and offals of beasts, before that time, made, erected and set up, by certain persons, to the jurors aforesaid unknown, unlawfully and injuriously did continue, and yet doth continue; and that the said J. S. on the said ——— day of ——— in the year last aforesaid, and on divers other days and times) &c. as in the first count from the (*) to the end.)

OATH.

An Oath taken on the Common Prayer Book, containing the Epistles and Gospels, is good. 2 *Keb.* 314.

THE stat. 15 *G.* 3. *c.* 39. Gives authority to justices to administer oaths where penalties are to be levied, or distresses made in pursuance of acts of parliament.

A Jew should be sworn on the old Testament. 2 *Keb.* 314. and they are allowed to put on their hats when sworn. 2 *Str.* 821. A Mahomedan on the Koran. 2 *Str.* 1104.; and a Gentoo, according to the custom of his religion. 1 *Atk.* 21. It is immaterial what the particular opinions are of persons professing christianity, as far as regards the taking of an oath; it is only necessary that they believe the sanction of an oath, the existence of a Deity, and a future state of rewards and punishments. *Peake, R.* 11. But

a person having no idea of a God, or a future state of retribution, cannot be admitted to take an oath. *Leach.* 482.

OATHS OF OFFICE.

By stat. 13 *C.* 2. stat. 2 *c.* 1. and 5 *G.* *c.* 6. § 1. 2, Every person elected or chosen mayor; alderman; recorder; bailiff; town clerk; common councilman; or other office of magistracy, place or trust, or other employment relating to the government of cities, corporations, boroughs, &c. shall take the oaths of allegiance and supremacy, at the same time that the oath of office is taken, which shall be administered by those, who by charter or usage administer the oath of office, and in default thereof by two justices of the corporation, if there be any such, or otherwise, by two justices of the county; and in default thereof, every such election shall be void; which said justices shall cause memorandums to be made of such oaths taken before them, and delivered once a year to the town clerk, or other register or clerk, who shall enter the same in their books.

And every person who shall be admitted into any office, civil or military, or shall receive any pay, by reason of any patent or grant from the king; or shall have any command or place of trust in *England*, or in the navy; or shall have any service or employment in the king's household; all ecclesiastical persons, heads and members of colleges, being of the foundation, or having any exhibition, of eighteen years of age; and all persons teaching pupils, schoolmasters and ushers; preachers and teachers of separate congregations; high constables, and *practisers of the law*, shall, within six calendar months after such admission, take and subscribe the oaths of allegiance, &c. in one of the courts at *Westminster*, or at the general or quarter sessions of the peace, where he shall reside, between the hours of 9 and 12 in the forenoon, and no other; and during the time of the taking thereof, all proceedings in the said court shall cease. 1 *G.* *st.* 2. *c.* 13. § 2.; 2 *G.* 2. *c.* 31. § 3. 4.; 9 *G.* 2. *c.* 26. § 3.; 25 *C.* 2. *c.* 2. § 2. Every person making default herein, shall be incapable to hold his office; and if he shall execute any official duty after the times are expired, he shall, upon conviction, be disabled to sue in any action, &c. and forfeit £500 to him who shall sue for the same. 25 *C.* 2. *c.* 2. § 4. 5. 1 *G.* *st.* 2. *c.* 13. § 8.

By 3 *W.* 4 *c.* 13. An act to dispense with the necessity of taking certain oaths, and making certain declarations in the cases therein mentioned, and to render it unnecessary to receive the sacraments of the Lord's Supper as a qualification for offices, or for other temporal purposes. It is enacted that it shall not be

necessary for any person appointed, or to be appointed, to any office in this province, civil or military, mayor or other officer, or member of any corporation, or for any person admitted as a barrister or attorney, to make any declaration or subscription, or to take or subscribe any other oath than the following:

I, A. B., do sincerely promise and swear that I will be faithful and bear true allegiance to his Majesty King William, (or the reigning sovereign for the time being, or if a Queen, "to her Majesty Queen ——,") as lawful sovereign of the United Kingdom of Great Britain and Ireland, and of this province dependant on and belonging to the said kingdom; and that I will defend him, *(or her)* to the utmost of my power, against all traitorous conspiracies or attempts whatsoever, which shall be made against his *(or her)* person, crown or dignity; and that I will do my utmost endeavour, to disclose and make known to his *(or her)* Majesty, his *(or her)* heirs or successors, all treasons or traitorous conspiracies and attempts which I shall know to be against him *(or her)* or any of them; and all this I do swear without any equivocation mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power whatsoever, to the contrary. So help me God.

Sec. 3. Which oath, together with the oath of office, shall be taken within the same period, and under the same disabilities and penalties for the omission thereof, as is now by law provided. § 4. No person shall be required to take the sacrament according to the rites of the church of England, nor shall the omission to do so, subject the party to any penalty or disability.

OFFICER.

If a *public officer* neglects a duty incumbent on him, either by common law or by statute, he is indictable for his offence, being considered as amenable to the law for every part of his conduct, and liable to punishment for not faithfully discharging it. *R. v. Wyatt*, 1 *Salk.* 380. *Anon* 6 *Mod.* 96. *R. v. Bambridge*, 1 *Haw. c.* 66. § 1. *Note.*

ORDERS OF MAGISTRATES.

Where a justice of the peace has power to make an order, and direct it to an inferior ministerial officer, if such officer disobey it, and there is no particular remedy prescribed to punish his disobedience, it is an *indictable* offence. *R. v. Davis*, *Say.* 163. 1 *Bott.* 388.: and *a fortiori* the disobedience of an order of sessions, or

of an order made by two justices, is indictable; and this too, whether there be another remedy or not; for the prosecutor has his option either to adopt that remedy, or proceed by indictment at common law. *R. v. Robinson*, 2 *Burr.* 799. If the order is made upon several persons, they must be all personally served with it, before they can be indicted for disobeying it. It is no defence to a party, for a total disobedience of an order, that when the order was served upon him, he was not able to perform its requisition with so much facility as if he had been sooner ordered to perform what was required of him, for he is bound to obey an order as much as lies in his power, and is not justified in utterly disregarding it. *Deacon's C. L.*

ORPHAN CHILDREN.

By the 39 *G.* 3. *c.* 3. It is enacted, that when the father or mother of any infant child shall die, or shall abandon their infant child or children, the town-wardens of any township, where such child or children shall be, with the approbation and consent of two justices, may bind such child or children as apprentices, until the age of 21 years, in case of males, and 18 years in case of females; and the indenture under their hands and seals, and countersigned by two justices, shall be valid in law. § 2. The like power is given to the mother, when the father abandons his children. § 3. But when the relations of any such orphan or abandoned children, are able and willing to support and bring them up, the town-wardens are not to apprentice them: and by § 4. A further exception is made, where the child has attained the age of 14 years, in such case he shall not be apprenticed without his consent thereto.

For the form of an indenture, see title '*Apprentices*,' ante p. 24.

OUTLAWRY.

By the 55 *G.* 3. *c.* 2. § 2. The several courts of quarter sessions in the several districts in this province, are declared to be in the place and stead of the sheriffs' county courts in England, so far as respects any outlawry. § 3. The process upon every indictment shall be a capias from the court where the indictment is found, to bring the person indicted into court; and if not taken, during the sitting of the court, then to bring him before some justice, to be dealt with according to law, which said capias shall be made returnable in the court of king's bench, on the first day of term, next after the sitting of the said court, before which such indictment shall have been found, and if the sheriff shall return *non est inventus*, then an *alias* shall issue from the king's bench, tested the first

day of term, if in term time, or on the last day of the preceding term, if in vacation, returnable before the court of king's bench, on the first day of the next term. § 4. And if to the said writ the sheriff shall return non est inventus, then upon motion in court, or before a judge, in vacation, a writ of *exigent* shall issue, tested on the first day of term, or on the last day of the preceding term, if in vacation, directed to the same sheriff, returnable on the first day of the fifth term from that in which the same was awarded, and in the form required, (vide act). § 5. The sheriff shall, at three successive general quarter sessions, before the return of the said writ, in open court, immediately after the commission of the peace shall be read, make proclamation of the persons named in the exigent, requiring them to render to the indictment. Sec. 6. And if the persons so demanded do not appear, the sheriff shall endorse upon the said writ of exigent, the following return :—

Form of Return.

"By virtue of the within writ, to me directed, at the court of general quarter sessions of the peace, held at —— in and for the district of —— on —— the —— day of —— in the year within written, the within named A. B. was a first time demanded, and did not appear: and at the court of general quarter sessions of the peace, held at —— aforesaid, for the district aforesaid, on —— the —— day of —— in the year aforesaid, (or as it may be) the said A. B. was a second time demanded, and did not appear: and at the court of general quarter sessions of the peace, held at —— aforesaid, for the district aforesaid, on —— the —— day of —— in the year aforesaid, (or as it may be) the said A. B. was a third time demanded, and did not appear, therefore the said A. B. according to the law of this province, is outlawed.

The answer of —— C. D. *Sheriff.*

Sec. 7. In all cases wherein any writ of exigent shall be awarded against any person described in the indictment, as being lately conversant in any other district, a writ of proclamation shall be awarded with the same teste and return as the writ of exigent, directed to the sheriff of such district, in the form prescribed, (vide act) and the sheriff of such district shall, at three successive courts of general quarter sessions, before the return of the said writ, in open court, the first day of the court, make proclamation according to the said writ, and shall return the same in the following form :—

George the third, &c. &c. &c.

To the sheriff of the —— district, *greeting*.

Whereas, by a writ, we lately commanded our sheriff of the district of —— that he should cause A. B. late —— to be demanded

from general quarter sessions to general quarter sessions, until, according to the law of this province, he should be outlawed, if he did not appear, and if he did appear then, that he should take him and cause him to be safely kept, so that he might have his body before us, on the —— day of —— term then next, wheresoever we should then be in Upper Canada, to answer to a certain bill of indictment found against him, for —— therefore we command you, that in pursuance of the act of the parliament of this province, passed in the fifty-fifth year of our reign, you cause the said A. B. to be proclaimed upon three several days, according to the form of the said statute, that he render himself to our sheriff of —— so that he may have his body before us at the time aforesaid, wheresoever we shall then be in Upper Canada, to answer to the said indictment, and have there then this writ. Witness, the honorable —— at Toronto, this —— day of —— in the —— year of our reign.

Sec. 9. After the return of the exigent and proclamation, the person or persons against whom the same shall have issued, shall, in default of appearance, incur the same disabilities, and the like process shall be thereupon had, as in cases of outlawry by the criminal law of England, as it stood on the 17th day of September, 1792. Sec. 11. The continuance of this act limited to two years. The above act was, however, revived by the *55 G. 3. c. 2.* and continued by several subsequent acts; and lastly, by the *3 W. 4. c. 6.* by which it is continued in force for six years, and to the end of the following session.

By the *3 W. 4. c. 4.* any person, accessories as well as principals, indicted for any capital offence, shall be liable to the same punishment, whether convicted by verdict or confession, or shall be outlawed upon indictment.

OVERSEERS OF HIGHWAYS.

By the *11 G. 4. c. 7.* The inhabitants, at their annual town meetings, may choose any number of overseers, not exceeding thirty.

For the duties of the office, *see ante title* "HIGHWAYS," p. 199.

PARDON.

A PARDON is a work of mercy extended towards a criminal, whereby the King, either before his attainder, conviction or sentence, or afterwards, forgives him for the crime which he has committed, and remits any punishment, pain or penalty, which he has thereby incurred. *2 Inst.* 233.

By the 27 *H.* 8. *c.* 24. It is enacted, that the King shall have the whole and sole power and authority thereof, united and knit to the imperial crown of this realm, as of good right and equity it appertaineth. The power of pardoning offences is thus inseparably incident to, and inherent in the crown; and is entrusted to the Sovereign, upon a special confidence that he will spare those only whose case (could it have been foreseen) the law itself would have excepted out of its general rules, which the wisdom of man cannot make so perfect as to suit every particular case. 1 *Show.* 284. 2 *Haw. c.* 37. § 8. But besides a special pardon granted by the King's charter, there may be a *general* pardon, or act of grace, passed by the legislature; but in this instance also, proceeding from the King, for the pardon of certain crimes, committed before a certain period named in the act. Such was the act of grace of 20 *G.* 2. *c.* 52. But these acts of general pardon have now, for a long time been discontinued; the special pardon, therefore, proceeding from the King's peculiar grace and favor, is that with which we have now alone to deal. The King may pardon all offences against the crown, or the subject, with some few exceptions. These are—1. *The sending any subject of the realm a prisoner into any parts beyond the seas;* which, in order to preserve the liberty of the subject, is, by the *habeas corpus* act, (the 31 *Car.* 2. *c.* 2. § 12.) made a *præmunire*, and unpardonable, even by the King. And see *ante* "KIDNAPPING." Neither can the King pardon a *common nuisance*, while it remains unredressed, or so as to prevent its abatement. Nevertheless, where a man is convicted, and fined for a *nuisance*, the King may, after judgment, remit the fine. 2 *Haw. c.* 37. § 33. Upon the same principle, the King cannot pardon an offence against a *penal statute* after the information brought; for the informer has then acquired a private property in his share of the penalty. 3 *Inst.* 338. 4 *Bl. Com.* 398. There is also another restriction of a peculiar nature, that affects the prerogative of pardoning; and that is in the case of parliamentary impeachments, wherein the King's pardon cannot be *pleaded* to any such impeachment, so as to impede inquiry, and stop the prosecution of great and notorious offenders. 12 & 13 *W.* 3. *c.* 2. This statute, however, does not restrain the King from pardoning the offender after *conviction* on impeachment. 4 *Bl. Com.* 399. A pardon is not effectual unless it is under the great seal; for a warrant under the privy seal, or sign manual, though sufficient to admit the party to bail, is not of itself a complete irrevocable pardon. 6 *St. Tr.* 166. It is also a general rule, that wherever it may be reasonably presumed that the King has been deceived, the pardon is void. Therefore, any suppression of truth, or suggestion of falsehood, in a charter of pardon,

will vitiate the whole, for the King was misinformed. 3 *Inst.* 238. 2 *Haw. c.* 37. § 8. And this is in conformity with the statute of 27 *Ed.* 3. *c.* 2. which directs that in every charter of the pardon of felony, the suggestion, and the name of him that maketh the suggestion, shall be comprised; and if it be found untrue, the charter shall be disallowed. *General words* have a very imperfect effect in pardons;—thus, a pardon of all "*felonies*" will not pardon a *conviction* or attainder of felony; but the conviction or attainder must be particularly mentioned; and if the party is convicted by verdict, the pardon must recite the indictment and conviction. 2 *Haw. c.* 37. § 8.

The statute *Ric.* 2. *st.* 2. *c.* 1. Enacts, that no pardon for *treason*, *murder*, or *rape*, shall be allowed, unless the offence be particularly specified therein; and particularly in *murder*, that it shall be expressed whether it was committed by lying in wait, assault, or *malice prepense;* upon which Sir Edward Coke observes, that it was not the intention of the parliament that the King should ever pardon murder under these circumstances, and therefore they prudently laid the pardon under this restriction, because they did not conceive it possible that the King would ever excuse an offence by name, which was attended with such high aggravations. 3 *Inst.* 236. And it is remarkable enough, says Sir W. Blackstone, that there is no precedent of a pardon in the register, for any other homicide than that which happens *se defendendo*, or per *infortunium;* to which two species the King's pardon was expressly confined by the statutes of 2 *Ed.* 3. *c.* 2. and 14 *Ed.* 3. *c.* 15. which declare that no pardon of homicide shall be granted, but only where the King may do it by the *oath of his crown*; that is to say, where a man slayeth another in his own defence, or by misfortune. But the above statute, (*Richard* 2.) enlarges, by implication, the royal power, provided the King is not deceived in the intended object of his mercy; and therefore, pardons of murder were always granted with a *non obstante* of the statute of *Richard* 2. till the time of the revolution, when, the doctrine of *non obstantes* ceasing, it was doubted whether murder could be pardoned generally; but it was determined by the court of king's bench, that the King may pardon on indictment of murder, as well as a subject might have discharged an appeal for that offence. *Salk.* 499.

A pardon may also be *conditional;* that is, the King may extend his mercy on what terms he pleases, and consequently, may annex to his pardon any condition that he thinks fit, whether precedent or subsequent, on the performance whereof the validity of the pardon will depend. 2 *Haw. c.* 37. § 45. This prerogative is occasionally exercised in this province, in the pardon of felons, on condition of banishment for life. A general pardon

by act of parliament, containing no exceptions, is more beneficial in one respect, than by the King's charter, inasmuch as a man is not bound to plead it; but the court must *ex-officio* take notice of it; neither can he lose the benefit of it by his own *laches* or negligence, as he may of the King's pardon. *Fost.* 43. 2 *Haw. c.* 37. § 61. But if any persons are excepted out of an act of general pardon, no one can then take benefit of it without specially pleading it; and he must shew in his plea, that he is not one of the persons excepted. *Id.* § 60. But the King's pardon must, in all cases, be specially pleaded, and produced in court *under seal;* and this too at a proper time; for if a man is indicted, and has a pardon in his pocket, and does not plead it when arraigned, but puts himself upon his trial by pleading the general issue, he thereby waves the benefit of the pardon, and cannot afterwards resort to it. 2 *Haw. c.* 37. § 59. 67.

By 5 & 6 *W. & M. c.* 13. When a pardon is pleaded by any criminal, the judges have a discretionary power to bind him to his good behaviour, with two sureties, for any term not exceeding seven years.

The *effect* of a free pardon by the King, is to make the offender in all respects a new man; to acquit him of all corporal penalties and forfeitures annexed to that offence for which he obtains his pardon; and not so much to restore his former, as to give him a new credit and capacity. But nothing can restore or purify the blood when once corrupted; which is the consequence of the attainder of *treason* or *murder*, if the pardon be not allowed till after the attainder, but the high and transcendent power of parliament; yet, if a person so attainted, receives the King's pardon, and afterwards has a son, that son may be heir to his father; because the father being made a new man may transmit new inheritable blood; though had the son been born before the pardon, he could never have inherited at all, nor can he inherit if he has an elder brother living, born before the attainder; for in that case the land will escheat *pro defectu hæredis.* 1 *Hale*, 358. 4 *Bl. Com.* 402. By stat. 3 *W.* 4. *c.* 5. corruption of blood is taken away, except in cases of high treason: and it shall be lawful for every person or persons, to whom the right or interest, to, or in any lands after the death of any such offender, should or might have appertained, if no such attainder had been, to enter into the same.

PATENT RIGHTS.

By the 7 *G.* 4. *c.* 5. When any subject of his Majesty, being an inhabitant of this province, shall allege that he has invented any new and useful art, machine, manufacture, or composition of mat-

ter not known, or used before the application, and shall petition the governor, signifying a desire of obtaining an exclusive property in the same, and praying a patent; it shall be lawful for the governor, &c. to grant letters patent under the great seal of the province, and passed in the usual form, to the said petitioner, his executors, &c. for a term not exceeding fourteen years, and every inventor, before he can receive such patent, shall swear (or being a Quaker, &c. affirm,) that he is the true inventor or discoveror of the art, machine, or improvement, for which he solicits a patent, (which oath or affirmation may be made before any justice) and shall deliver a written description of his invention or improvement, and of the manner or process of compounding the same, in such full, clear, and exact terms, as to distinguish the same from all other things before known; and to make any person skilled in the art or science, of which it is a branch, or with which it is most clearly connected, to make compound and use the same; and in the case of any machine, he shall fully explain the principle, and the several modes in which he has contemplated the application of that principle or character, by which it may be distinguished from other inventions; and he shall accompany the whole with drawings and written references, where the nature of the case admits of drawings, or with specimens of the ingredients, or of the composition of matters, sufficient in quantity for the purpose of experiment; which description, signed by himself, and attested by two witnesses, shall be filed in the office of the secretary of the province, and certified copies thereof shall be competent evidence in all courts, where the patent right shall come in question, and the inventor moreover shall deliver a model of the machine by him invented, if the secretary shall deem such model necessary.

For the fees payable on obtaining such patent and other collateral matters, see the act.

Petition for a Patent.

To his excellency sir John Colborne, K. C. B. Lieutenant Governor of the province of Upper Canada, and Major General commanding his Majesty's forces therein.

The humble petition of A. B. of —— in the home district, engineer—

Sheweth:

That your petitioner is a natural born subject of his Majesty, [or a subject of his Majesty,] and that he has invented a new and useful machine, &c. *(describing the article in general terms,)* not known before this application, a specification whereof, accom-

panied with the necessary drawings and references, and duly attested, has been filed by your petitioner in the office of the secretary of this province, pursuant to the statute in such case made and provided.

Your petitioner therefore, humbly prays, that your excellency will be pleased to direct, that his Majesty's letters patent may be granted to your petitioner for the said invention, and for the term allowed by law, and your petitioner as in duty bound, will ever pray, &c. A. B

Toronto, 1st Jany. 1835.

Oath of the Invention.

Home District, } A. B. of ——— in the said district, engineer,
to wit. } maketh oath and saith that he verily believes, he is the sole and true inventor and discoveror of the machine mentioned, and referred to in the specification and drawings hereunto annexed. A. B.

Sworn the ——— day of ——— 183—.
Before ——— *J. P.*

The Specification.

No general form can be given of this, it will of course depend upon the construction of each particular invention; the act however expressly defines what it shall contain, and requires also, that it shall be signed by the petitioner and be attested by *two* witnesses.

Penalties.—See ante title "*Fines*," p. 169.

PENITENTIARY.

By statute 3 *W.* 4. *c.* 44. The sum of £12,500. was granted by the provincial parliament for the erection of a penitentiary in this province, to be vested in his Majesty.

By the 4 *W.* 4. *c.* 37. It is enacted, that the penitentiary shall be under the direction of five inspectors, to be appointed by the lieutenant governor during pleasure, and that the said board of inspectors shall choose one of their number to be their president, and shall have full power to make all necessary rules and regulations respecting the discipline and police of the said penitentiary, § 2. It shall be the duty of the inspectors to examine into all matters connected with the government discipline and police of the penitentiary; the punishment and employment of the prisoners therein confined; the financial concerns and contracts for work;

and the purchases and sales of the articles provided for such penitentiary, or sold on account thereof; and they may from time to time require reports from the warden or other officers of the penitentiary, in relation to any of the said matters. § 3. Also to inquire into any improper conduct alleged against the officers, and for this purpose they shall be empowered to issue subpœnas to compel the attendance of witnesses, and the production of papers and writings before them. § 4. And any witness forswearing, shall, on conviction, suffer the pains and penalties of perjury. § 5. It shall be the duty of the warden and other officers, to admit the inspectors into every part of said penitentiary, and exhibit all books and papers, &c. § 6. The board shall keep minutes of its proceedings, signed by the members, and shall meet once in two months at the penitentiary, and then inspect the same, and shall annually, on or before the 1st of November, make a report to the legislature, of the state and condition thereof; of the prisoners confined therein; of monies expended and received; and generally, of all proceedings during the past year; provided always, that no inspector shall be *warden*, or be concerned in the business of such warden, or hold any appointment connected with the penitentiary. § 7. The officers of the penitentiary shall be as follows:—1. One warden or principal superintendent, who shall reside at or near the penitentiary. 2. One clerk. 3. One chaplain. 4. One physician and surgeon. 5. One deputy warden, who shall also reside at or near the penitentiary. 6. And not exceeding twenty keepers: such clerk and keepers to be appointed by the board of inspectors, and to hold office during pleasure; and the warden, chaplain, physician, and deputy warden, to be appointed by the lieutenant governor, to hold their office during pleasure. § 8. The lieutenant governor is authorised to procure a guard, who shall, while on duty, be subject to the orders of the warden or his deputy. § 9. The warden, before entering on the duties of his office, shall give a bond to his Majesty, with sufficient sureties, to be approved by the inspectors, in the penal sum of £2,000. for the faithful performance of his duties, according to the form annexed, and shall be filed with the secretary of the province; and the warden, clerk, deputy warden, and keepers, shall, before they enter upon their respective offices, severally take and subscribe, before the chairman of the quarter sessions of the Midland district, the following oath, to be filed with the clerk of the peace.

"I, A. B. do promise and swear, that I will faithfully, diligently and justly, serve and perform the office and duties of —— of the provincial penitentiary, in Upper Canada, according to the best of my abilities. So, help me God."

Sec. 10. It shall be the duty of the warden or his deputy, to attend constantly at the penitentiary, except when performing some other necessary duty; to exercise a general supervision over the government, discipline and police, of the said penitentiary; to give the necessary directions to the keeper, and to examine daily into the state of the penitentiary, and the health, conduct and safe keeping of the prisoners; to use every proper means to furnish such prisoners with employment, the most beneficial to the public, and the best suited to their various capacities, and to superintend all the manufacturing and mechanical business carried on within the penitentiary; to receive the articles so manufactured, and to sell and dispose of the same, for the benefit of the province, when the labour of the convicts is not let out by contract. § 11. All transactions and dealings on account of the penitentiary, shall be in the name of the warden, by his name of office, of "warden of the provincial penitentiary in Upper Canada," and by that name he shall sue and be sued. § 12. Disputed claims shall be referred to arbitration. § 13. Whenever the inspectors of the penitentiary shall so direct, it shall be the duty of the warden to make contracts from time to time, for the labour of the convicts, with such persons and upon such terms as the warden may deem most beneficial. § 14. The prisoners shall be supplied with provisions by contract, unless the inspectors shall otherwise direct; such contract to be made annually or semi-annually, under the direction of the inspectors, at a fixed price per day, for each prisoner; such contracts being previously advertised for in two of the district newspapers, and in such other newspapers, and for such time as the inspectors shall direct; and the contractors shall give satisfactory security for the performance of their contracts. § 15. The necessary medicines and hospital stores shall be purchased by the warden from time to time, as may be requisite, with the advice of a physician, and under the direction of the inspectors. § 16. The warden is also authorised to purchase raw materials, taking bills, whenever any supplies or necessaries shall be purchased. § 17. No inspector, warden, or officer, or person employed at the penitentiary, shall be directly or indirectly interested in any contract, purchase or sale, on account of the penitentiary, under the penalty of £100. to be recovered by action of debt, in any of his Majesty's courts in this province: to be applied, when recovered, to the use of the province. Sec. 18. The warden shall keep a regular and correct account of all monies received and paid, and deliver to the inspectors a monthly return thereof, upon oath, and stating the balance in hand. Sec. 19. The warden shall close his accounts annually, on or before the 1st day of October, and render to the governor a full account, to be laid before the legislature: also, an inventory of

the goods, raw materials, and other property of the province, on hand, exhibiting a complete detail of the transactions of the penitentiary, for the year, with an affidavit annexed of the warden and clerk, stating that the same are correct and true, in every respect, to the best of their knowledge and belief. Sec. 20. The warden shall, on or before the 15th October in every year, transmit to the inspectors a complete and comprehensive view of the transactions of the penitentiary during the preceding year; of the number of convicts confined therein; the various branches of business in which they are employed; the number employed in each branch; and the profits to the province, if any, arising therefrom. Sec 21. No perquisites or emoluments shall be taken by the officers of the establishment, except that the warden or deputy shall be provided with dwellings at or near the penitentiary, and shall be furnished with fuel and candles, and servants from among the convicts. Sec. 22. The warden shall make an annual report to the governor, on or before the 1st day of October, of the convicts discharged in the preceding year, and the particulars. Sec. 23. In case of vacancy, the deputy warden shall fulfil the duties of warden, until such vacancy be filled. Sec. 24. The physician of the penitentiary shall keep a register of the sick and deceased convicts, stating their names, ages, and cause of death. Sec. 25. All books and papers relating to the penitentiary, shall there remain. Sec. 26. The salary of the warden shall be £200. per annum, and of the deputy warden £150., and the other officers shall receive such remuneration as the inspectors, with the approbation of the governor, shall deem just. Sec. 27. The convicts, other than such as shall be confined in solitude, shall be kept to hard labour, except in case of sickness, and at night, singly in a cell, and also during the day time, when unemployed. Sec. 28. Their clothing and bedding shall be of coarse materials, manufactured, when it can be done, in the penitentiary: they shall be supplied with a sufficient quantity of inferior and wholesome food, and each of them with a Bible, at the expense of the province. Sec. 29. In case of any violent conduct by the convicts, the officers may use all suitable means to defend themselves and prevent escape. Sec. 30. The warden shall take charge of any property which any convict shall have, upon entering the penitentiary, and shall preserve the same for his benefit, and pay the amount thereof to such convict when released, or to his legal representative; and in case of death, if no legal representative shall appear within a year, the property shall be applied to the use of the province. Sec. 31. Upon the discharge of any convict, by pardon or otherwise, the warden shall furnish him with necessary clothing, not exceeding £3. and a sum of money not exceeding £1. Sec. 32. Any person conveying

letters to or from any convict without the consent of the warden, shall be guilty of a misdemeanor. Sec. 33. The following persons shall be authorised to visit the penitentiary at pleasure, viz.:— the lieutenant governor, the members of the legislature, the judges of the king's bench, and the attorney and solicitor generals, but no others, except by permission of the warden, or under such regulations as the inspectors shall provide. Sec. 34. The officer in charge of any convict, shall deliver to the warden a certified copy of the sentence, and shall take a certificate of delivery, and in case of escape, the warden shall take all proper measures for his apprehension, and he may offer a reward, not exceeding £50. for the apprehension and delivery of such convict. Sec. 35. No inquest shall be held on the body of a deceased convict, unless requested by the warden or one of the inspectors; but the warden shall in all cases of death, from any other cause than ordinary sickness, call the coroner; and upon the death of any convict, unless the body shall be removed by relatives within twenty-four hours for interment, the warden shall deliver the same, on demand, to the agent of the medical society of the district. Sec. 36. In case of any pestilence, or contagious disease breaking out among the convicts or in the vicinity, the inspectors may cause the convicts to be removed to some suitable place of security. Sec. 37. Contains a similar provision in case of fire. Sec. 38. It shall be the duty of the warden to receive and keep any convict until discharged by due course of law, the province supporting such convict, and paying the expenses attendant upon the execution of such sentence, except that the district in which conviction shall take place shall defray the expense of conveying such convict to the penitentiary. Sec. 39. In case any prisoner shall escape, or attempt to escape, he shall be liable to the like punishment as upon a committal under the authority of a court of justice, and the officer shall be liable to the like penalties for any neglect or violation of duty in respect to such prisoner, as if such prisoner had been committed under the like authority. Sec. 40. The warden and other persons employed in the penitentiary shall be exempt from serving on juries, or in the militia, and from town or parish offices. Sec. 41. Spirituous or fermented liquors prohibited, without a written permit signed by the physician of the penitentiary. Sec. 42. The salaries of the officers shall be paid by the receiver general, in discharge of such warrants as may be issued by the governor.

PERJURY.

PERJURY, (from the latin, *perjurium*) is the crime of *wilful false swearing* to any matter of fact *material* to the issue or point in

question, when a *lawful* oath is administered to the party, in some *judicial* proceeding. 3 *Inst.* 164.; 1 *Haw. c.* 69. § 1; 1 *T. R.* 69. And it is an offence at common law.

Subornation of perjury, is the offence of procuring another to take such a false oath, as constitutes perjury in the principal, and is an offence under various statutes.

It has been settled that *justices of the peace* have no jurisdiction over perjury at *common law*. 2 *Haw. c.* 8. § 38. *Salk.* 406. 2 *Stra.* 1088. But under the statute of *Elizabeth*, they have, this statute however only relates to the crime of *subornation*, and from the difficulty attending prosecutions under it, is now seldom resorted to.

1. *Of Perjury at Common Law.*

The perjury must be wilful, that is, the false oath must be taken deliberately and advisedly; for, if it originated more from the weakness than the perverseness of the party; as, if it be occasioned by surprise or inadvertency, or a mistake of the true meaning of the question; it will not then amount to voluntary and corrupt perjury. 1 *Haw.* 69. § 2. It has been said, that no oath shall amount to perjury, unless the fact deposed to be sworn *absolutely* and *directly;* but this doctrine is now exploded, and the crime of perjury, it is agreed may be committed by a man who swears that he *believes* a fact to be *true*, which he *must know* to be false. *R. v. Pedley*, 1 *Leach*, 327. *Miller's case*, 3 *Wils.* 427. 2 *Bl.* 881. The oath must be *false;* upon which head it has been observed, that it is not material whether the fact which is sworn be in itself true or false; for, however the thing sworn may happen to prove agreeable to the truth, yet if it were not *known to be so*, at the time by him who swears to it, his offence is altogether as great as if it had been false. This position cannot be denied, if a witness wilfully swears that he knows a thing to be true, which at the same time, he knows nothing of; and thus impudently endeavours to induce those before whom he swears to proceed upon the credit of a deposition, which any stranger might make as well as he. 1 *Haw. c.* 69. § 6. *per Lawrence, J.* 6. *T. R.* 637.; *R. v. Edwards*, 2 *Russ.* 518. *note (e)* All *false oaths* taken before those who are any ways intrusted with the administration of justice, in relation to any matter legally pending before them, are properly perjuries. Therefore, all persons are indictable who wilfully forswear themselves in any *judicial proceeding*, depending before a court of law or equity, or any other court, whether the proceedings therein be of record or not; where an affidavit is made of any matters *material* in a cause, the party making it is indictable for perjury, although the affidavit is never used to found any subsequent pro-

ceeding upon. *R. v. White*, 1 *M. & M.* 271.; *R. v. Hailey*, *Ry. & M.* 94.; 1 *C. & P.* 258.; and so is a false oath before a justice of the peace, in any proceeding within the jurisdiction of the justice, in which he is authorised by law to administer an oath. 1 *Haw. c.* 69. sec. 3. or before a commissioner of the court of K. B., duly authorised; but in all private transactions between man and man, no oath whatsoever, however false it may be, is punishable as perjury in a criminal prosecution,—such as a false oath taken by one upon making a bargain, that the thing sold is his own. Neither is the breach of a *promissory oath* within the legal definition of perjury. Therefore, no public officer who neglects to perform the duties of his office, which he has previously sworn faithfully to discharge—however punishable he may be for a misdemeanor, and aggravated as his offence may be by the violation of his oath—is indictable for perjury. 2 *Haw. c.* 69. § 3. Neither can a juror, who gives a verdict contrary to evidence, be prosecuted for perjury. 1 *Haw. c.* 69. § 5. The oath must be taken before some court or person *legally authorised* to administer an oath; for no oath whatsoever, which is taken before persons not legally authorised, or competent to administer an oath, can amount to *perjury* in the eye of the law. 1 *Haw. c.* 69. § 4. The thing sworn must be *material* to the point in question; for if it be wholly foreign from the purpose, or altogether immaterial, not tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot then amount to perjury; because it is, in such case, merely idle and insignificant—as, if upon a trial, in which the question was whether A. was *compos* or not, a witness unnecessarily and impertinently describes a journey which he took to see the party, and happens to swear falsely in relation to some of the circumstances of the journey. 1 *Haw. c.* 69. § 8. But if the false oath has any tendency to prove or disprove the matter in issue, however circumstantially—as, if the party wilfully mistake the colour of a man's coat, or speak falsely to the credit of another witness,—it will in like manner amount to perjury. *Rex v. Griebe*, 12 *Mod.* 142. *R. v. Muscot*, 10 *Mod.* 195. With respect to *subornation* of perjury—if the person incited to take a false oath do not actually take it, the person by whom he was so incited is not guilty of *subornation of perjury;* but he is, nevertheless, liable to be punished as for a gross misdemeanor, in attempting to pervert the course of justice. 1 *Haw. c.* 69. § 10.

2. *Of the offence by Statute.*

By 5 *Eliz. c.* 9. (made perpetual by 29 *Eliz. c.* 5. sec. 2. and 21 *Jac.* 1. *c.* 28. sec. 8.) it is enacted by sec. 3. that every person

who shall unlawfully and corruptly procure any witness to commit any wilful and corrupt perjury, in any matter or cause depending in suit and variance, shall forfeit £40; or (by sec. 4.) if he has not goods to that amount, shall suffer imprisonment for half a year, and stand upon the *pillory* for one hour, in some market town next adjoining to the place where the offence was committed. By sec. 5. no person so convicted can afterwards be received as a witness in any court of record, until the judgment be reversed. By sec. 6. any person, either by subornation, unlawful procurement, sinister persuasion, or means of any others, or by his own act, consent or agreement, committing wilful and corrupt perjury, shall, upon conviction, forfeit £20, and be imprisoned 6 months, and his oath not afterwards received in any court, until judgment reversed; or if the offender has not goods, shall be set in the pillory, and have both his ears nailed, and be discredited and disabled for ever to be sworn in any court of record, until judgment shall be reversed. By sec. 9. the judges of any court, where the perjury is committed, and the justices of assize and gaol delivery, and justices of the peace, at their quarter sessions, may inquire of, hear and determine, all offences against the act. And (by sec. 13.) the act is not to restrain the authority of any other judge having absolute power to punish perjury before the making of the statute, so that he set not upon the offender less punishment than is contained in the act.

The above statute of *Elizabeth* did not alter the nature of the offence at *common law*, but merely enlarged the punishment. It is, however, seldom resorted to in the present day, on account of the difficulty of convicting under it; for, in the first place, it has been held not to apply to any case unless it can be shewn that there is a *party grieved* by the perjury, and that the perjury, also, was committed in a matter relating to the proof of what was in issue. *3 Salk.* 270. Nor can a witness who gives false evidence for the crown be indicted under it; for which a reason is given in the report, that does not appear to be a very sound one, namely—because an indictment being *the suit of the King*, he cannot punish his own witness, who swears for him. *Price's case*, *Cro. Jac.* 120.

The statute also extends to no other perjury than that of a witness; therefore, perjury committed in an answer to a bill in chancery, or in swearing the peace against another, cannot be prosecuted under the statute. *1 Haw. c.* 69. § 20.

A false *affidavit* has been also held to be not within the statute. *1 Roll.* 79.; *2 Roll. ab.* 77.; *3 Keb.* 345.; *3 Salk.* 269. But this appears to be too general a proposition; for if the affidavit be of such a nature that either of the parties in variance be grieved,

hindered or molested, in respect of their cause, by reason of the perjury, the offence then seems to be within the meaning, as well as within the letter of the statute. 1 *Haw. c.* 69, § 21.

3. *Of other Statutes relating to the Offence.*

By the 23 *G.* 2. *c.* 11. Which professes to be passed for the laudable purpose of facilitating prosecutions for perjury—it is enacted by sec. 3. that any judge of assize or nisi prius, or general gaol delivery, while the court is sitting, or within 24 hours afterwards, may direct any person (examined as a witness upon any trial before him) to be prosecuted for the said offence of perjury, in case there should appear to him reasonable cause for so doing, and to assign the prosecutor counsel, without fee or reward; and such prosecution shall not be subject to any fees of court, &c.

By 7 & 8 *W.* 3. *c.* 34.; 8 *G.* 1. *c.* 6.; and 22 *G.* 2. *c.* 46. The false *affirmation* or *declaration* of any of the people called Quakers, is declared to incur the penalties of perjury; and so, by several provincial statutes—49 *G.* 3. *c.* 6.; 10 *G.* 4. *c.* 1. &c.

By 12 *G.* 1. *c.* 29. § 4. If any person convicted of perjury, forgery, or common barratry, shall practise as an attorney, solicitor or agent, the judges of the court shall examine the matter in a summary way, in open court, and may sentence the offender to be transported for seven years.

4. *Of the Indictment.*

An indictment for perjury at *common law*, cannot be preferred at the quarter sessions; for by the common law, the sessions have no jurisdiction of perjury; though it seems they have jurisdiction over it under the 5 *Elizabeth c.* 9. 2 *Haw. c.* 8. § 38. But as prosecutions under the statute are much more difficult than those at *common law*, and are seldom adopted, even in the courts above, they are of course still less in use at the sessions.

Besides the proceeding by indictment, the court before which any glaring offence of perjury is committed, has also the power to punish the offender in a summary way, as for a contempt.

Of the Punishment.

Perjury is punishable at common law with fine, imprisonment, and pillory, at the discretion of the court; and by statute 2 *G.* 2. *c.* 25. § 2.—made perpetual by 9 *G.* 2. *c.* 18.—the judge may order the party to be transported, or to be imprisoned and kept to hard labour in the house of correction, for a term not exceeding

seven years. The false affirmation of a Quaker is punishable in the same manner. 22 *G.* 2. *c.* 46. § 36.; and of other sectarians, such as menonists, tunkers, &c.—by the 49 *G.* 3. *c.* 6.; 10 *G.* 4. *c.* 1.

Subornation of perjury is punishable by £40 fine, six months imprisonment, and the pillory. 5 *Eliz. c.* 9.

PHYSIC AND SUGRERY.

By 8 *G.* 4. *c.* 3. It is enacted, that the practice of physic, surgery, or midwifery, for hire, gain, or hope of reward, by any person not duly licensed, or not being actually employed as a physician or surgeon in his Majesty's naval or military service, shall be a *misdemeanor;* and that upon the trial of any person charged with such misdemeanor, the proof of license, or the right to practise, shall lie upon the defendant. But no prosecution shall be commenced after one year from the offence committed; and no person convicted shall be imprisoned for more than six months, or fined above £25.

Indictment for practising without being duly qualified.

Home District, } The jurors for our lord the King, upon their
to wit. } oath present, that A. A. late of the township of —— in the home district, gentleman, being a person of a wicked mind and disposition, unlawfully, wickedly, and injuriously minding and intending to impose upon and deceive divers liege subjects of our lord the King, under the false colour and pretence that he the said A. A. was well skilled in the art, calling, profession and practice of physic, surgery and midwifery, and that he was of sufficient knowledge and ability to undertake and practise the said profession or calling, and to execute and perform the duties of such art, profession and calling; and also unlawfully, wickedly and injuriously, going about, and causing and procuring himself, the said A. A., to be engaged, retained and employed, by divers liege subjects of our said lord the King, in attempting to heal them of divers maladies, sores and diseases, wherewith the said liege subjects were affected, and in the delivery of pregnant women, for large sums of money to be paid to him the said A. A. for such his pretended skill in the said art, practice, profession or calling of a physician, surgeon and midwife, on the first day of May, in the tenth year of the reign of our sovereign lord George the fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, King, defender of the faith, with force and arms, at the township of —— aforesaid, in the home district aforesaid, unlawfully, wickedly and injuriously, did

set up and practise the said art, profession and calling of a physician, surgeon and midwife, and from thence hitherto hath practised physic, surgery and midwifery, at the township aforesaid, in the district aforesaid, for gain, hire, and hope of reward, he the said A. A. then and there not being a member of the medical board in this province, and not being licensed by any governor, lieutenant governor, or person administering the government of this province, to practise physic, surgery or midwifery, in this province, and not having been licensed by any medical board in this province, and not being actually employed as a physician or surgeon in his Majesty's naval or military service, contrary to the form of the statute in such case made and provided, to the evil example of all others in like case offending, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. A. afterwards, to wit, on the first day of July, in the tenth year of the reign aforesaid, with force and arms, at the township aforesaid, in the district aforesaid, unlawfully, wickedly and injuriously, did set up and practise the art, profession and calling, of a physician and surgeon, and from the said first day of July, in the year aforesaid, to the first day of March, in the eleventh year of the reign aforesaid, did practise physic and surgery, for hire, gain, and hope of reward, he the said A. A. then and there not being a member of the medical board of this province, and not being licensed to practise physic or surgery in this province, and not being actually employed as a physician or surgeon in his Majesty's military or naval service, contrary to the form of the statute in such case made and provided, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the King, his crown and dignity.

PIRACY.

What acts amount to Piracy.

WHERE the subjects of the same state commit robbery upon each other upon the high seas, such acts of violence and depredation amount to piracy. And the same, if the subjects of different states, connected by ties of amity and friendship, commit robbery upon one another. 4 *Inst.* 154. But where states are at open war with each other, the plundering of an enemy is then not an act of piracy, but a mere act of hostility and lawful capture. So, if persons making a capture at sea do so by authority of any foreign prince or state, this also cannot be considered piracy.

Thus, even a capture by authority of the marauding states of Algiers, Tunis, or Tripoli, cannot be treated as piracy. *Grot.* 2. *c.* 18. § 2. *Sir L. Jenk.* 790. Formerly indeed, no subjects of the British empire were deemed pirates, if they acted under the commission of any foreign power; but by the 11 & 12 *W.* 3. *c.* 7. (which was levelled against commissions granted by *James* 2, after his abdication), it is enacted, that if any natural-born subjects or denizens of this kingdom shall commit any piracy or robbery, or any act of hostility against others of his Majesty's subjects, or states, on pretence of authority from any person whatsoever, the offenders shall be deemed to be *pirates*, felons and robbers; and being convicted under that act, or the 28 *H.* 8. *c.* 15. shall suffer capital punishment. In addition to this statute, the 18 *G.* 2. *c.* 30. enacts, that all natural-born subjects or denizens, who during any war shall commit any hostility upon the sea, or in any haven, river, creek or place, where the admiral has jurisdiction, against his Majesty's subjects, by virtue or under colour of any commission from any of the King's enemies, or shall be otherwise adherent or giving aid or comfort to his Majesty's enemies upon the sea, or where the admiralty has jurisdiction, may be tried as *pirates*, felons and robbers, in the court of admiralty, on shipboard or on land; and being convicted, shall *suffer death*, &c. as under the last statute.

By § 9. of the above statute of 11 & 12 *W.* 3. *c.* 7. If any commander or master of any ship, or any seaman or mariner, shall, in any place where the admiral has jurisdiction, betray his trust, and turn pirate, enemy or rebel, and piratically and feloniously run away with his or their ship, or any barge, boat, ordnance, ammunition, goods or merchandize; or yield them up voluntarily to any pirate; or shall bring any seducing message from any pirate, enemy or rebel; or consult, combine or confederate with, or attempt or endeavour to corrupt any commander, master, officer or mariner, to yield up or run away with any ship, goods or merchandize, or to turn pirate; or if any person shall lay violent hands on his commander, whereby to hinder him from fighting in defence of his ship and goods; or shall confine his master; or make, or endeavour to make, a revolt in the ship—he shall be adjudged, deemed, and taken to be a *pirate*, felon and robber, and being convicted, shall suffer accordingly.

By 8 *G.* 1. *c.* 24, § 1. (made perpetual by 2 *G.* 2. *c.* 28. § 7.) If any commander or master of any ship, or any other person, shall anywise trade with any pirate, by truck, barter, exchange, or in any other manner; or shall furnish any pirate with any supplies of any kind; or shall *fit out* any vessel to trade with or supply or correspond with any pirate; or if any person shall correspond

with any pirate—every such offender shall be deemed and adjudged guilty of piracy, and shall suffer death.

Of Accessories.

Piracy being no felony by the common law, nor made so generally by any statute, the accessories to the offence were only triable by civil law, if their offence was committed on the sea; but if on the land, they were not triable at all till the 11 & 12 *W.* 3. *c.* 7. By § 10. of this statute, it is enacted, that every person who shall knowingly or willingly set forth any pirate, or aid and assist in any piracy, he shall be deemed an accessory. And after any piracy shall be committed, every person who shall receive, entertain or conceal any such pirate, shall likewise be deemed an accessory. And all such accessories shall be tried after the course of the common law, according to the statute 28 *H.* 8. as principals, and not otherwise, and shall *suffer death*, and loss of land, according as such principals. But by 3 *G.* 1. *c.* 24. all persons who by statute 11 & 12 *W.* 3. are only deemed accessories, are by this statute declared to be *principals*, and shall and may be dealt with accordingly.

Of the Indictment, Trial and Judgment.

The indictment must allege the fact to have been committed on the *high seas*, within the jurisdiction of the *admiralty*, and lay it to be done *feloniously* and *piratically*. If it turn out that the goods were taken any where within the body of a county, the admiralty can have no jurisdiction to inquire into the offence. So, on the other hand, if goods were taken at sea and afterwards brought on shore, the offender cannot be indicted as for larceny in that county into which they were carried, because the original felony was no taking whereof the common law takes cognizance. 3 *Inst.* 113. 1 *Haw. c.* 37. § 10.

By 28 *H.* 8. *c.* 15. § 1. All treasons, felonies, robberies, murders and confederacies, committed in or upon the sea, or in any haven, river, creek or place, where the admiral has, or pretends to have power, authority or jurisdiction, shall be tried by commissioners of *oyer* and *terminer*, in such shires and places as shall be limited by the King's commission, in the same manner as if such offences had been committed on the land; and by § 3. the offender is excluded from the benefit of clergy. But notwithstanding this statute, the admiralty can claim no jurisdiction where the haven, river or creek, is within the body of a county; for in that case, the offence was always cognizable at common law; and all rivers are within the jurisdiction of the common law, until they flow past the furthest point of land next the sea.

In order to save the expense and delay of bringing offenders from remote places abroad to be tried in England, the 11 & 12 *W.* 3. *c.* 7. § 1. provided that courts of admiralty abroad might be authorised to try piracies, felonies and robberies, upon the sea; but as this act did not include treason, misdemeanors, and other offences, the 46 *G.* 3. *c.* 54. enacts, that all treasons, piracies, felonies, robberies, murders, conspiracies, and other offences, of what nature or kind soever, committed upon the sea, or in any place where the admiral has jurisdiction, may be tried (according to the course of the common law of this realm, used for offences committed upon the land) in any of his Majesty's colonies, under the great seal. And all persons convicted of such offences, shall be liable to the same punishment as persons would be if tried within this realm under the 28 *H.* 8.

POSSE COMITATUS.

The *Posse Comitatus*, or power of the county, includes the aid and attendance of every person above fifteen years of age, under the degree of peer, except ecclesiastical persons and such as labor under any infirmity. It may be raised by the sheriff, or by justices of the peace, where a riot is committted,—where a forcible entry is made, or where there is any force or rescue contrary to the commands of the King's writ, or in opposition to the execution of justice. Persons refusing to assist in this service, when legally required, may be fined and imprisoned. The statutes relating to the *posse comitatus* are the 17 *R.* 2. *c.* 8.; 13 *H.* 4. *c.* 7. and the 2 *H.* 5. c. 8.; and see 2 *Inst.* 198.; 3 *Inst.* 161.

POST OFFICE.

By the 4 *G.* 3. *c.* 24. § 8. If any person shall counterfeit the hand-writing of any person in the superscription, in order to avoid the payment of postage, he shall be guilty of felony, and be transported for seven years.

By 5 *G.* 3. *c.* 25. § 19. If any person intrusted to take in letters, shall embezzle, or apply to his own use, any money by him received for postage, or shall destroy any letter so by him taken in, or shall not duly account for the money received by him for advanced postage, he shall be deemed guilty of felony.

By 5 *G.* 3. *c.* 25. § 17. If any person employed in the business of the post office shall secrete, embezzle, or destroy any letter or packet containing any bank note, bank post bill, bill of exchange, exchequer bill, &c., goldsmith's note for the payment of money or other bond, or warrant, bill, or promissory note for payment of

money, or American provincial bill of credit; or shall steal or take the same out of any letter or packet, he shall be guilty of felony.

Sec. 18. If any person shall rob any mail, although the same shall not be a taking from the person, or in the highway, or in a dwelling-house, or out-house, and although no person was put in fear, he shall be guilty of felony.

By 7 *G.* 3. *c.* 50. § 1. If any deputy clerk, agent, letter carrier, post boy or rider, or any other officer or person whatsoever, employed, or to be hereafter employed, in receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or in any other business relating to the post office, shall secrete, embezzle, or destroy any letter or letters, packet or packets, bag or mail of letters which he, she, or they shall or may be respectively entrusted with, or which shall have come to his, her, or their hands or possession, containing any bank note, bank post bill, bill of exchange, exchequer bill, South Sea or East India bond, &c. &c., bank receipt for payment of any loan, American provincial bill of credit, goldsmith's or banker's letter of credit or note, for or relating to the payment of money, or other bond, or warrant, draft, bill, or promissory note, whatsoever, for the payment of money; or shall steal and take out of any letter or packet that shall come to his, her, or their hands or possession, any such bank note, &c., every such offender shall be deemed guilty of felony.

Sec. 2. If any person or persons shall rob any mail or mails, in which letters are sent or conveyed by the post, of any letter, packet, bag, or mail of letters, or shall steal or take from or out of any such mail or bag, sent or conveyed by post, or from or out of any post office, or house, or place for the receipt or delivery of letters, any letter or packet, although such robbery, stealing, or taking, shall not appear to be a taking from the person, or upon the King's highway, or to be a robbery committed in any dwelling-house, or out-house; and although it should not appear that any person or persons were put in fear by such robbery, stealing or taking, yet such offender, upon conviction, shall be deemed guilty of felony.

Sec. 3. If any person employed in the business of the post office shall receive the postage of any letter, and burn or destroy such letter, or shall advance the postage of any letter, and not duly account, he shall be guilty of felony.

By the 3 *W.* 4. *c.* 4., which determines the number of cases in which capital punishment shall be inflicted,—it is enacted, that if any person shall rob any person carrying or conveying, or having charge of his Majesty's mail in any part of this pro-

vince, of any letter or letters, packet or packets, bag or mail of letters, every such offender being convicted thereof, shall suffer *death*, as a felon.

Sec. 12. And accessories before the fact, shall also suffer death.

Pot and Pearl Ashes.—See title "Flour."

POUND BREACH.

Pound Breach is the forcibly breaking the pound, in which cattle or goods have been put after being lawfully distrained, for the purpose of rescuing them. It has been doubted whether this is an indictable offence, when unaccompanied by a breach of the peace. 4 *Leon.* 12.; 3 *Burr.* 1791. 1731. But as pound breach is considered a greater offence, at common law, than even a rescue of the goods distrained, and is no doubt an injury and insult to public justice, it seems to be equally indictable as such at common law. *Mirror c.* 2. § 26. 2 *Chit. c.* 4. 204. *Note (b.)* It is well observed, however, that the civil remedy given by the statute of 2 *W. & M. c.* 5. § 4. will, in most cases of a pound breach, or a rescue of goods distrained for rent, be found the most desirable mode of proceeding, where the offenders are responsible persons. 1 *Russ.* 363. For under the provisions of that statute, the party grieved may, in a special action on the case, recover treble damages and costs against the offenders, or against the owner of the goods, if they come to his use. *See Bradley on Distresses*, 282. 6 *Bac. Ab. Rescue* (c.)

The punishment, upon a conviction by indictment for pound breach, is fine or imprisonment, or both.

Indictment for Breaking Pound. (Chitty.)

—— District, } The jurors, &c. that on, &c. at, &c., one J.
to wit. } C. took and distrained one mare and two colts, of the cattle of one J. S., late of the township aforesaid, yeoman, of the price of twenty pounds, in and upon a certain close or parcel of land, of him the said J. C., situate and being at &c. aforesaid, wrongfully feeding and depasturing upon the grass growing in and upon the said close and parcel of land, and doing damage to him, the said J. C. there, as a distress for the damage then and there done and doing by the said cattle, and the said mare and colts so taken and distrained, as aforesaid, he, the said J. C., on the same day and year aforesaid, at &c. aforesaid, in the common pound of the said township of ——, in the district aforesaid, impounded and kept, and detained the same in the said common pound, there as a distress, for the cause aforesaid, and the jurors,

&c. do further present, that the said mare and colts, being so impounded, and remaining in the the said common pound, there as a distress for the cause aforesaid, the said J. S. on &c. aforesaid, with force and arms, at &c. aforesaid, the said common pound, broke and entered, and the said mare and colts from and out of the same, without the license, and against the will of the said J. C. and without any satisfaction having been made to the said J. C. for the said damage done by the said mare and colts, as aforesaid, unlawfully did rescue, take, lead, and drive away, in contempt of our lord the King and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the King, his crown and dignity.

POUND KEEPERS.

By the 33 *G.* 3. *c.* 2. § 6. A pound keeper or pound keepers, (not exceeding 6, by the 11 *G.* 4. *c.* 7.) shall be elected at the annual town-meetings; and such pound keepers are authorised to impound all cattle, and every horse, sheep and hog trespassing on the lands of any person, having enclosed the same by a sufficient high fence, to be agreed on at the town-meeting: and also to impound any stoned horse, more than one year old, running at large upon the highways or commons, and to detain such horse until the owner shall pay 20*s*., one half to the person taking the horse, the other to the collector, for the public stock of the district.

For penalty on refusal to secure, &c. see post "Town Officers."

By 34 *G.* 3. *c.* 8. § 3. Pound keepers are required to impound any horned cattle, horse, sheep or swine, found trespassing, until the damages are paid to the party on whose lands any damage may have been done, and the pound keepers fees, which fees shall be regulated by the general quarter sessions.

By the 43 *G.* 3. *c.* 10. § 2. The pound keeper, within forty-eight hours after distress impounded, shall affix a notice thereof, in writing, in three of the most conspicuous parts of the township, giving a description of such distress, and when and where intended to be sold; and if the owner shall not, within 15 days, redeem the same by paying the pound keeper's charges and the damages, at the pound, the pound keeper may sell and pay the same, returning the surplus to the owner.

Sec. 3. And if the owner shall not appear, or shall dispute the amount claimed, any justice may summon three freeholders to assess the damages, upon oath.

By the 11 *G.* 4. *c.* 7. § 2. No distress shall be impounded out of the township, but shall be taken to the nearest pound.

Notice by the Pound Keeper.

Notice is hereby given, that I the undersigned A. B. pound keeper of the township of ———, in the ——— district, have this day, at the request of C. D. of ———, impounded in the common pound of the said township of ———, situate at ——— in the said township, [one bay horse, &c. *describing also any particular marks he may have*, and one brown and white cow, &c. *describing also the animal, more particularly if need be,*] which were this day found trespassing upon the lands of the said C. D. in the said township, and unless the owner or owners thereof shall, within fifteen days from the date hereof, redeem the same at the aforesaid pound, by paying the damages sustained by the said C. D., by reason of the said cattle so trespassing on his lands as aforesaid, and the charges of the pound keeper; I shall proceed to sell the same by public auction, on the —— day of —— next, in the market place of the said town of ——— *(or wherever else it may be expedient to effect such sale,)* pursuant to the statute, in such case made and provided. Witness my hand at ——, in the said district, the —— day of ——, 183 .

A. B., pound keeper.

Warrant for the summons of three freeholders to assess the damages.

——— District, } To the constable of the township of ———,
to wit. } in the said district: These are in his Majesty's name, to authorise and command you forthwith to summon and warn three able and sufficient persons, freeholders of the said township, to be and attend before me J. P. Esq. one of his Majesty's justices of the peace, for the said ——— district, on——— the ——— day of ———, at ———, in the said township, at the hour of —— in the forenoon of the same day, then and there upon oath, to assess the damages sustained by C. D. of ———, by reason of the trespassing of certain cattle, to wit. [*here describe the cattle,*] upon the lands of him, the said C. D., situate in the said township, on the —— day of ——, and which have been in consequence impounded at the common pound, situate at ——— &c., and be you there to certify what you have done herein, together with this precept. Herein fail not. Given under my hand and seal at —— in the said district, the —— day of ——.

Jurors Oath.

You shall well and truly assess the damages, in a certain trespass of cattle complained of by C. D., and a true assessment make according to the evidence; so help you God.

PRŒMUNIRE.

THE offence of *præmunire* was so called from the words of the writ issued preparatory to the prosecution thereof, "*Præmunire facias A. B. quod tunc sit coram nobis*," &c. the word being a barbarous corruption in the law Latin of the word *præmoneri*. This writ commanded that the defendant should be forewarned to appear to answer the contempt, with which he stood charged. It took its origin from the exorbitant power claimed, and exercised in England by the Pope, which, even in the former days of bigotry and blind zeal, was too heavy for our ancestors to bear. The words *præmunire facias* being thus used to command a citation of the party, have denominated in common speech, not only the writ, but the offence itself, of maintaining the papal power, by the name of *præmunire:* and this was originally ranked as an offence, immediately against the King, because it consisted in introducing a foreign power into the land, and creating an *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the King alone. 4 *Bl. Com.* 103.

By the statute 16 *Ric.* 2. *c.* 5. which is usually called the statute of *præmunire*, and is generally referred to by all subsequent statutes—it is enacted, that whoever procures at Rome, or elsewhere, any translations, processes, excommunications, bulls, instruments or other things, which touch the King, against him, his crown and realm, and all persons aiding therein, shall be put out of the King's protection, their lands and goods be forfeited to the King's use, and they shall be attached by their bodies to answer to their King and his crown; a process of *præmunire facias* shall be made out against them, as in other cases of provisors.

By these, says Sir W. Blackstone, the usurped civil power of the bishop of Rome was pretty well broken down, as his usurped religious power was, in about a century afterwards, the spirit of the nation being so much raised against foreigners, that in the reign of H. V. the alien priories, or abbies for foreign monks, were suppressed, and their lands given to the crown, and no further attempts were afterwards made in support of these foreign jurisdictions. 4 *Bl. Com.* 112.

After the reformation, the penalties of *præmunire* were extended to mere papal abuses. Thus, by 24 *H.* 8. *c.* 12. and 25 *H.* 8. *c.* 19. 21., to appeal to Rome from any of the King's courts; to sue to Rome for any license or dispensation; or to obey any process from thence, are made liable to the pains of *præmunire*.

By 5 *Eliz. c.* 1. To refuse the oath of supremacy, incurs the pains of *præmunire;* and to defend the pope's jurisdiction in this realm, is also a *præmunire* for the first offence, and high treason for the second.

Thus far the penalties of *præmunire* seem to have kept within the proper bounds of their original institution, namely, the depressing the power of the pope; but being pains of no inconsiderable consequence, it has been thought fit to apply them to other heinous offences, some of which bear more and some less relation to this original offence, and some no relation at all. 4 *Bl. Com.* 116. By the 13 *Car.* 2. *c.* 1. It is also declared a præmunire to assert maliciously and advisedly, by speaking or writing, that both or either of the houses of parliament have a legislative authority without the King. By the habeas corpus act, 31 *Car.* 2. *c.* 2. it is made a *præmunire* and incapable of the King's pardon, to send any subject of this realm to parts beyond the seas. By 7 and 8 *W.* 3. *c.* 24. Serjeants, counsellors, proctors, attornies, and all officers of courts, practising without having taken the oath of allegiance and supremacy, and without having subscribed the declaration against popery, are guilty of a præmunire, whether the oaths be tendered or not. But these provisions are now modified by the 3 *W.* 4. 3. 13. See ante title "Oaths of Office," p. 336.

By the 6 *Ann, c.* 7. To assert that any person, other than according to the acts of settlement and union, hath any right to the throne of these kingdoms; or that the king and parliament cannot make laws to limit the descent of the crown, is likewise declared a *præmunire.*

Numerous as the statutes are on this subject, prosecutions for this offence have been seldom instituted.

PRESENTMENT.

A PRESENTMENT *generally* taken is a very comprehensive term; including not only *presentments*, properly so called, but also all inquisitions of office, and indictments by a grand jury. But a presentment, as commonly understood, is the notice taken by a grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them at the suit of the King. As the presentment of a nuisance, a libel, and the like; upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer for it. 2 *Inst.* 739. See further on this subject ante title "grand jury." p. 189.

PRISON BREAKING.

PRISON BREAKING is the offence of a party, who is in legal custody upon any charge, effecting his own escape by force. This, by the common law, was anciently accounted *felony*, for what-

ever cause, criminal or civil, the party was lawfully imprisoned. But by 1 *Edw.* 2. *stat.* 2. It is declared that none that should from thenceforth break prison should have judgment of life or member for breaking of prison only; except the cause for which he was taken and imprisoned required such a judgment if he had been convict thereupon, according to the law and custom of the realm. Therefore, although, to break prison and escape, when lawfully committed, for any *treason* or *felony*, still remains felony as at common law, the breaking of prison when lawfully confined upon any inferior charge, is punishable only as a high misdemeanor, by fine and imprisonment. 4 *Bl. Com.* 130.

In whatever place a person is restrained of his liberty under a lawful arrest for a supposed crime, whether it be in the stocks or the street, or in the common gaol, or the house of a constable or private person, such place is properly a prison within the meaning of the statute. 2 *Inst.* 589. *Haw. c.* 18. § 4.

But if no felony whatever has been committed, and the party is merely in custody on a *mittimus*, without being indicted, then he is not guilty within the statute, by breaking the prison, his imprisonment being, in this instance, unjustifiable.

There must be an actual, and not merely a constructive breaking, to make the offence felony. Therefore, if through the negligence of the gaoler, the prison doors are left open, and the party escapes without using any kind of force or violence, he is only guilty of a misdemeanor. 2 *Inst.* 590. 1 *Hale*, 611. The breaking must be by the prisoner himself, or by his procurement; for if other persons, without his privity or consent, break the prison, and he escape through the breach so made, he cannot be indicted for the breaking, but only for the escape. 2 *Haw. c.* 18. § 10. But no breach of prison will amount to felony, unless the prisoner actually escape. 2 *Haw. c.* 18. § 12. 2 *Inst.* 590. 1 *Hale*, 611.

PRISONER.

If the gaoler keep the prisoner more strictly than he ought of right, whereof the prisoner dieth, this is felony in the gaoler, by the common law; and this is the cause, that if a prisoner die in gaol, the coroner ought to hold an inquest. 3 *Inst.* 91.

Money found upon a prisoner when he is apprehended, will, in general, be directed to be restored to him before trial, if it appear by the depositions that it is in no way material to the charge on which he is tried. *R. v. Barnett.* 3 *C. & P.* 600. It is a settled rule at common law, that no counsel shall be allowed a prisoner upon his trial, upon the general issue in any capital

crime, unless some point of law shall arise, proper to be debated, a rule which, as Sir W. Blackstone observes, (however, it may be palliated under cover of that noble declaration of the law, when rightly understood, that the judge shall be counsel for the prisoner) seems to be not at all of a piece with the rest of the humane treatment of prisoners by the English law. 4 *Bl. Com.* p. 355. And the judges themselves are so sensible of this defect, that they never scruple to allow a prisoner counsel to instruct him what questions to ask, or even to ask questions for him in matters of fact. *Ib.* p. 356. In cases of felony, a copy of the indictment cannot be regularly obtained without an order of court: but in cases of misdemeanor, the defendant is entitled to a copy of the record as a matter of right, without application to the court. 1 *Bl. rep.* 385.

In treason, however, the prisoner is entitled to a copy of the indictment.

PRIZE FIGHTING.

All persons present at, and countenancing a prize fighting, are guilty in law of a misdemeanor. And when such a fight is expected to take place, a magistrate ought to cause the intended combatants to be brought before him, and compel them to find sureties to keep the peace till the assizes or sessions; and if they refuse to do so, he should then commit them till they comply with such requisition. *R. v. Billingham.* 2 *C. & P.* 234.

PROBATE.

Of the office and duty of Executors.

An executor, before the will be proved, may seize and take into his hands any of the goods of the testator. He may pay debts, receive debts, make acquittances and releases of debts due to the testator, and take releases and acquittances of debts owing by the testator. Also, an executor may, before probate, sell or give away any of the goods or chattels of the testator: and in general, an executor is a complete executor before probate, to all purposes but bringing of actions. 1 *Salk.* 301. *Went. off. Ex.* 34. 35. *Lovelass on Wills*, 258. 259.

The executor may, in convenient time after the testator's death, enter into the house descended to the heir, for the removing and taking away of goods, so as the door be open, or at least the key be in the door: but he cannot justify the breaking open the door of any chamber to take goods there; but only may take those in the rooms which be open. *Lovelass on Wills.* 260.

Of the office and duties of an Administrator.

An administrator cannot act before letters of administration are granted to him. *Lovelass on Wills.* By stat. 31 *Edw.* 3. *c.* 11 & 21. *H.* 8. *c.* 5. § 3. In case any person die intestate, or the executors refuse to prove the testament, administration shall be granted to the widow or next of kin, or to both, taking surety for true administration.

By 22 & 28 *Car.* 2. *c.* 10. made perpetual by 1 *Jac.* 2. *c.* 17. It is enacted, that the surplusage of an intestate's estate shall be distributed:—one third to the wife of the intestate, the residue amongst his children and such as legally represent them, if any be dead, other than such children (not heirs at law) who shall have any estate by settlement of the intestate in his life time, equal to the other shares. Children, other than heirs at law, advanced by settlements, or portions, not equal to other shares, shall have so much of the surplusage as shall make the estate of all to be equal. But the heir at law shall have an equal part in the distribution with the other children, without any consideration of the value of the land which he hath by descent or otherwise from the intestate. § 4.

If there be no children, nor legal representatives of them, one moiety shall be allotted to the wife, the residue equally to the next of kindred to the intestate, in equal degree, and those who represent them. § 5.

No representation shall be admitted among collaterals, after brothers and sisters children; and if there be no wife, all shall be distributed among the children; and if no child, to the next of kin to the intestate in equal degree, and their representatives. § 6.

No such distribution shall be made till one year after the intestate's death, and every one to whom any shares shall be allotted, shall give bond with sureties in the said courts, that if debts afterwards appear, he shall refund his rateable part thereof, and of the administrators charges. § 7.

A brother or sister of the half blood shall have an equal share with those of the whole blood. *Com. Dig. Adm. (H.)*

If none of the kindred will take out administration, a creditor may, by custom, do it. *Lovelass on Wills*, p. 7.

Of the Will.

No witnesses are absolutely necessary to render valid a will of merely personal property: but with respect to a will of real or *landed property*, until lately, *three* witnesses were necessary; and now bythe 4 *W.* 4. *c.* 1. § 51. *two* witnesses are sufficient.

Probate of the Will, how granted, &c.

By stat. 33 *G.* 3. *c.* 8. A court is constituted and established for the granting of probates of wills, and committing letters of administration of the goods of persons dying intestate, to be called the court of probate of the province of Upper Canada; the governor to preside therein and pronounce judgment in all suits that may be brought before him, with power to call in an assessor or assessors to act with him, and from time to time to appoint an official principal, registrar, and other necessary officers. By § 2. The governor is authorised to institute, by commission, under the great seal, in every district, a court for granting probate of wills and letters of administration of persons having personal estate within such district, to be called the surrogate court of the Eastern district; the surrogate court of the Midland district; the surrogate court of the Western district; and also to appoint from time to time, a surrogate to preside as judge in each of the said courts, and a registrar, and such other officers as may be necessary; and each of the said courts shall have full power to issue process and hold a cognizance of all matters relative to the granting of probate of wills and letters of administration, and to grant same within their respective districts, except as hereinafter mentioned. § 3. In cases where the deceased shall have goods, chattels or credits, to the amount of £5, in any other district than the one in which he died; or when any person shall die, possessed of goods to the value of £5 in two or more districts, the probate or letters of administration shall be granted by the court of probate only. By § 6. Every will duly proved, shall be kept among the records of said court; and a transcript thereof duly authenticated under seal of the court, shall be taken and received as the regular probate of such will, in all his Majesty's courts within this province. By § 7. No nuncupative will shall be good where the estate thereby bequeathed, shall exceed £30, that is not proved by three witnesses, at the least, present at the making thereof; nor unless the testator bid the persons present bear witness; nor unless made at the last sickness of the deceased, and in his dwelling-house, or where he had been resident ten days before making such will, except when such person was taken sick being from home, and died before he returned. § 8. After six months from the speaking of such testamentary words, no nuncupative will shall be good, except the substance thereof were committed to writing, within six days after the making such will. § 9. No probate shall be granted till fourteen days after the death of the testator; nor shall any nuncupative will be at any time received, unless the widow or next of kin have been cited. § 10. Nor until due proof

be made before the said judge or surrogate, that such person is dead, and died intestate. § 15. In cases where administration shall be granted with the will annexed, such letters shall express that such will shall be observed and performed, and for such purpose the administrator shall enter into bond with two or more sufficient sureties. § 17. The court of probate and court of surrogate respectively, shall hold four sittings or terms for hearing and determining actions, suits and causes, &c. viz: The first term from the first Monday in *January* to the Saturday following, inclusive: the second term, from the last Monday in *March*, to the Saturday following, inclusive: the third term, from the first Monday in *June*, to the Saturday following, inclusive; and the fourth term, from the last Monday in *September*, to the Saturday following, inclusive.

Sec. 18. The following fees may be taken:

Fees to be taken by the Official Principal and Surrogate.

OFFICIAL PRINCIPAL AND SURROGATE.	£	s.	d.	REGISTER. £	s.	d.
For seal to the probate of a will, to letters of administration with the will annexed, and to letters of administration, where the property devolving is under £300,	0	16	0	0	6	8
From 300 to £1000,	1	0	0	0	6	8
When above £2000,	2	0	0	0	6	8
For seal of the court to any writing or instrument,	0	13	4	0	3	4
For receiving caveat,	0	6	8	0	0	0
For filing the same,	0	0	0	0	3	4
For receiving inventory,	0	6	8	0	0	0
For filing the same,	0	0	0	0	3	4
For citation,	0	8	4	0	1	0
For collating will,	0	0	0	0	6	8
For drawing bond and attesting execution,	0	0	0	0	6	8
For searching register, each year,	0	0	0	0	1	0
For office copy, each page 18 lines, 6 words in each,	0	0	0	0	1	0
APPARATOR OR MESSENGER.						
For service of citation,				0	2	0
For travelling, each mile,				0	0	4

Letters of Administration, how granted, &c.

By same stat. 33 *G.* 3. *c.* 8. § 11. when application is made for letters of administration by any person, not entitled as next of kin to the intestate, the court, before granting the same, shall issue a citation to the next of kin, summoning him or her to appear and shew cause against the same, and in case the next of kin should happen to be absent from the province, the court may then grant administration *pro tem.* to the next of kin in the province. § 12.

The judge or surrogate, upon granting letters of administration, shall take sufficient bonds from the party, with two sureties, in the name of the governor, according to the form prescribed.

Form of the condition of the Bond.

"The condition of this obligation is such, that if the within bounden A. B. administrator of all and singular the goods, chattels and credits of C. D. deceased, do make or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have or shall come into the hands, possession or knowledge of him, the said A. B. or into the hands and possession of any other person or persons for him, and the same so made, do exhibit or cause to be exhibited into the registry of ——— court, on or before the ——— day of ——— next ensuing, and the same goods, chattels and credits, and all other the goods, chattels and credits of the said deceased, at the time of his or her death, which at any time after shall come into the hands or possession of the said A. B. or into the hands and possession of any other person or persons for him, do well and truly administer according to law, and further do make or cause to be made, a true and just account of his said administration, at or before the ——— day of ———, and all the rest and residue of the said goods, chattels and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed by the judge of the court, for the time being, shall deliver and pay unto such person or persons respectively, as the said judge by his decree or sentence, conformably to the provisions in a certain act of parliament, intituled, "An Act for the better settling intestate estates," and passed in the twenty-second and twenty-third year of the reign of Charles 2, and also in a certain act passed in the first year of king James 2, contained, shall limit and appoint, and if it shall hereafter appear, that any last will or testament was made by the deceased, and the executor or executors therein named do exhibit the same unto the said court, making request to have it allowed and approved accordingly, if the said A. B. within bounden, being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue."

Sec. 13. It shall be lawful for the said judge of probate and surrogate respectively to call by citation such administrators to account, and to order and make just and equal distribution of what remains clear, after all debts, funeral and just expenses of

every sort first allowed, according to the provisions of the said statutes (22. 23. *C.* 2. & 1. *J.* 2) But no such distribution shall be made until one year after the intestate's death, and every one participating in such distribution shall give bond to refund in case any debts shall afterwards appear. § 16. An appeal shall lie *from* the surrogate court *to* the court of probate, if made within *fifteen* days after the judgment appealed from, and security given for prosecuting such appeal.

Of the payment of Debts, &c.

In payment of debts, the executor or administrator must observe the rules of priority; otherwise, on deficiency of assetts, if he pays those of lower degree first, he must answer those of a higher out of his own estate. 2 *Bl. Com.* 511.—*First*, The executor, &c. may pay all funeral charges and the expence of taking letters of administration.—*Ibid.*—*Secondly*, Debts due to the king, on record or specialty.—*Thirdly*, Debts of record are to be paid, as judgments, (docketted according to the *statu. W.* & *M. c.* 20.) and of two judgments, he who first sues execution must be preferred; but before, it is at the election of the executor or administrator to pay which he pleases first. 2 *Bl. Com.* 465. 511. *Treat. of Eq.* 112.—*Fourthly*, Debts by specialty or special contract, such as are due by deed or special instrument under seal, covenant, deed of sale, lease reserving rent, or by bond or obligation; 2 *Bl. Com.* 465. 511. and rent in arrear is equal to a debt by specialty. 3 *Bl. Com.* 341. 347.—*Lastly*, Debts by simple contract, such as notes of hand, and debts of an ordinary description, not under seal, and these the executor is bound to pay as far as he hath assetts, and if no suit be commenced against him, he may pay one creditor in equal degree his whole debt, though he has nothing left for the rest. *Bl. Com.* 512. But as to debts of record, the executor is bound to take notice of these at his peril. But as to debts due by bond or other specialties, an executor may pay a debt on simple contract before a specialty, if he hath no *notice* of such specialty; for otherwise, it might be in the power of the obligee to ruin the executor by keeping the bond in his pocket, until the executor shall have paid away all the assetts in discharging simple contract debts. 2 *New. Abr.* 435. In payment of bonds and other obligations after due notice, it seems that the executor may (in like manner as respecting debts of record) pay which creditor he thinks fit first, although the other creditors are without remedy if there be no assetts; unless the day of payment in one obligation is expired, and the day of payment in the other is yet to come, in which case, the former is

to be first satisfied; or unless, there be suit commenced. But an executor may confess judgment on one obligation, and plead that to an action brought on another,—and if there be two actions brought on two several obligations, he that obtains judgment first must be first satisfied. *Lovelass on Wills*, 73. 74. 75. An executor or administrator, if a creditor also, may pay himself the whole of his demand, to the exclusion of all other creditors of the same degree; but he cannot retain his own debt in prejudice to those of a higher degree; neither shall one executor be allowed to retain his own debt in prejudice to that of his co-executor, in equal degree; but both shall be discharged in proportion. 3 *Bl. Com.* 18.

PROVISIONS.

SELLING unwholesome provisions, is an indictable offence at common law, and so is the forestalling, engrossing or regrating of provisions, whereby the price is enhanced. See further on this subject, title "Forestalling," *p.* 191.

PUBLIC WORSHIP.

BY the 4 *W.* 4. *c.* 4. § 5. If any person shall wilfully disturb, interrupt or disquiet any assemblage of people, met for religious worship, by profane discourse, by rude and indecent behaviour, or by making a noise, either within the place of worship, or so near it as to disturb the order and solemnity of the meeting, such person shall, upon conviction, before any justice of the peace, on the oath of one or more credible witnesses, forfeit and pay any sum not exceeding £5, as such justice shall think fit. § 7. To be levied with the costs within the period specified for payment thereof, at the time of conviction by the justice before whom such conviction may have taken place, and in default thereof, the offender shall be committed for any term, not exceeding one month, unless the costs and fine shall be sooner paid. For further on this subject, and for the form of conviction, see post "Summary Punishment."

PUNISHMENT.

BY *stat.* 3. *W.* 4. *c.* 4. § 35. It is enacted, that all persons convicted of any offence, which, before the passing of this act, was punishable in this Province with death, with or without benefit of clergy, shall be liable to be banished, or to be transported beyond the seas for life, or for such term, not less than seven years, as the

court before which such person shall be convicted, shall adjudge or shall be liable in case such court shall think fit, to be imprisoned only, or imprisoned and kept to hard labour, or in solitary confinement in the common gaol, or in any penitentiary, or house of correction that may be provided for such purposes, for any term not exceeding fourteen years, except persons convicted of returning from transportation or banishment, with respect to whom the term of imprisonment, with or without hard labour, or by solitary confinement, may, in the discretion of the court, be extended to the term of his natural life; and in case of manslaughter, the offender shall be liable to be fined or imprisoned, or both, in the discretion of the court, such imprisonment not exceeding 12 calendar months. § 26. And if any person shall be convicted of forgery, or uttering any forged deed, will, instrument, note, bill, or writing, or of falsely personating any person, either of which offences was before the passing of this act punishable with death, the court may adjudge such person (except females) to be set in the pillory once or oftener, or to be once or oftener publicly or privately whipped, either in addition to any other punishment by law, or otherwise, as the court may think proper.

QUAKERS.

By 49. *G.* 3. 6. It is enacted, that every Menonist or Tunker, in any case in which an oath is required by law, or upon any lawful occasion wherein the affirmation or declaration of a Quaker, will by law be admitted, shall be and is hereby permitted to make his or her affirmation or declaration in the same manner and form as a Quaker by the laws now in force is required to do, having first made the following affirmation or declaration:

"I, A. B. do solemnly, sincerely and truly affirm and declare, that I am one of the Society of Tunkers or Menonists," [*as the case may be*]—which affirmation or declaration shall be of the same force and effect in all courts of justice, and other places where by law an oath is required, as if such Menonist or Tunker had taken an oath in the usual form; and all persons authorised to administer an oath, may administer such affirmation or declaration. § 2. Any person making a false affirmation or declaration, shall incur the pains and penalties of perjury. § 3. No Menonist or Quaker shall by virtue of this act, be qualified to give evidence or serve on juries in criminal cases, or hold or enjoy any office under government. By 10. *G.* 1. *c.* 1. Quakers, Menonists, Tunkers and Moravians are admitted to give evidence on criminal cases, upon making an affirmation in the following form in lieu of any oath:

"I, A. B. do solemnly, sincerely and truly declare, that I am

one of the Society called Quakers, Menonists, Tunkers or Unitas Fratrum or Moravians," [*as the case may be*]—and any person convicted of a false affirmation, shall incur the pains and penalties of perjury; but such persons shall not be permitted to serve on juries in criminal cases.

RAPE.

1. *Of Rape in general.*

RAPE, signifies the carnal knowledge of a woman, forcibly and against her will, and above the age of ten years, and was felony at common law. 2 *Inst.* 180. But by statute 3 *Edw.* 1. *c.* 13. It was made only a misdemeanor; afterwards by *stat.* 13 *Edw.* 1. *c.* 34. It was made felony again; and by statute 18 *Eliz. c.* 7. § 1. was made capital.

By § 4. of the latter statute, it is also enacted, that if any person shall unlawfully and carnally know and abuse any woman child, under the age of *ten* years, every such unlawful and carnal knowledge shall be felony. In which case, the consent, or non-consent is immaterial; as by reason of her tender years, she is incapable of judgment and discretion. 4 *Bl.* 212.

The offence of rape is no way mitigated by shewing that the woman at last yielded to the violence, if such her consent was forced, by fear of death or of duress. 1 *Haw.* 108. Nor is it any excuse that the woman is a common prostitute; for she is still under the protection of the law, and may not be enforced, 1 *Haw.* 108.; nor that she consent after the fact. *Ibid.* It is said by Mr. Dalton, that if a woman, at the time of the supposed rape, do conceive with child, by the ravisher, this is no rape; for (he says) a woman cannot conceive, except she doth consent; but Hawkins observes, that this opinion seems very questionable; not only because the previous violence is no way extenuated by such a subsequest consent, but also, because if it were necessary to shew that the woman did not conceive, the offender could not be tried till such time as it might appear whether she did or not; and likewise, because the philosophy of the notion may be very well doubted of. 1 *Haw.* 108.: and L. Hale says, this opinion in Dalton seems to be no law. 1 *H. H.* 731.

Evidence on Rape.

Lord Coke, defining carnal knowledge, says, there must be *penetratio*, that is, *rem in re;* but the least penetration maketh it carnal knowledge. 3 *Inst.* 59, 60. *East. P. C.* 437. There must also be an *emissio seminis;* therefore in *Hill's case*, where the jury found the prisoner guilty, but said they did not find the emis-

sion, [for, from interruption, it appeared probable that that was not effected,] a great majority of the judges held that both penetration and emission were necessary, but thought that the fact should be left to the jury. *Hill's case, East. P. C.* 439. From Hill's case, it appears that the fact of penetration is *prima facie* evidence of emission: so, where the prisoner remained on the body of the woman as long as he pleased, without interruption, this was held sufficient evidence to be left to a jury, of an actual rape. *Harmwood's case, E. P. C.* 440. *S. P. Kelly's case,* Bodmin, 1815, *coram* Chambre. Where the woman was dead, the evidence of other persons and her own depositions, (which contained no mention of emission,) were held sufficient to convict the prisoners; and that the jury might collect the fact of emission from other evidence. *Fleming and Windham's case, 2 Leach.* 855.

The party ravished, may give evidence on oath, and is in law a competent witness; but the credibility of her testimony, and how far forth she is to be believed, must be left to the jury, and is more or less credible, according to the circumstances of fact that occur in the testimony. 1 *H. H.* 632. For instance, if the witness be of good fame; if she *presently* discovered the offence and made pursuit after the offender; shewed circumstances and signs of the injury; if the place where the offence was committed, was *remote* from habitation; if the offender *fled* for it; these, and the like, are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. 1 *H. H.* 633. On the other hand, if she concealed the injury for any length of time, after she had the opportunity to complain; if the place where the offence was alleged to have been committed were *near* to inhabitants, or a thoroughfare for passengers, and she made no outcry when the offence was perpetrated, so that she might have been heard by others; or if a man prove himself to be in another place; or in other company at the time she charges him with the fact; or if she is wrong in the description of the place, or swears the fact to have been done in a place where it was impossible the man could have access to her at that time, as if the room was locked up, and the key in the custody of another person; these, and the like circumstances, carry a strong presumption, that the testimony is false or feigned. 1 *H. H.* 633.

Upon the whole, rape, it is true, is a most detestable crime, and therefore ought severely and impartially to be punished with death; but, it must be remembered that it is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent: therefore, a wise jury will be cautious upon trials of offences of this nature, that they be not so much transported with indignation at the heinousness of the offence, as to be over-hastily carried to the conviction of the per-

son accused thereof, by the confident testimony, sometimes of malicious and false witnesses. 1 *H. H.* 635, 636.

A male infant, under the age of fourteen years, is presumed, by law, to be incapable to commit a rape, and therefore, it seems, cannot be found guilty of it. 4 *Bl.* 212. 1 *Hal. P. C.* 631.

Punishment for Rape.

By the 3 *W.* 4. *c.* 4. § 5. It is enacted that every person, convicted of the crime of rape, shall suffer death as a felon. § 6. And that if any person shall unlawfully carnally know and abuse any girl, under the age of ten years, every such offender shall also suffer death as a felon.

Information.

[The common form of the commencement of an information will be found, ante p. 265.] It should state when, where, and by whom the offence was perpetrated; that the complainant resisted the force and violence, and called aloud for assistance; and that she immediately acquainted her neighbors and friends with the occurrence, *(as the case may be.)* The depositions of other witnesses should also be taken, to confirm the testimony of the complainant.

Warrant to Apprehend the Party.

Home District, } To the constable of the township of ——— and
to wit. } all other peace officers in the said district:—
Forasmuch as A. B. of ———, in the district aforesaid, laborer, hath this day been charged before me, J. P. Esq. one of his Majesty's justices of the peace for the said district, on the oath of C. D. of the township of ——, in the said district, single woman, *(or otherwise, as the case may be,)* for that he, the said A. B., on the —— day of ——, violently and feloniously did assault her, the said C. D., and her, the said C. D., then and there violently and against her will, feloniously did ravish and carnally know: These are, therefore, to command you, in his Majesty's name, forthwith to apprehend and bring before me, or some other of his Majesty's justices of the peace, in and for the said district, the body of the said A. B. to answer unto the said charge, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, at ——, in the district aforesaid, the —— day of ——, in the year of our Lord 183 .

Commitment for a Rape.

Home District, } J. P. Esquire, one of his Majesty's justices of
to wit. } the peace, for the said district: to the constable of the township of ——, in the said district, and to the keeper of the common gaol at Toronto, in the said district: these are to command you, the said constable, in his Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. B. charged this day before me, the said justice, on the oath of C. D. of ——, for that he, the said A. B. on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at —— in the said district, violently and feloniously did assault her, the said C. D., and her, the said C. D., then and there violently and feloniously and against her will, feloniously did ravish and carnally know; against the form of the statute in that case made and provided; and you, the said keeper, are hereby required to receive the said A. B. into your custody, in the same common gaol, and him there safely to keep, until he shall be thence delivered by due course of law. Herein fail not. Given under my hand and seal the —— day of ——

Commitment for carnally knowing a Girl under ten years.

Commencement as before.] on the —— day of ——, in the year of our Lord one thousand eight hundred and ——, at —— in the said district, feloniously did assault one C. D. a girl under the age of ten years, to wit, of the age of nine years, and her, the said C. D., then and there feloniously did unlawfully and carnally know and abuse; against the form of the statute in that case made and provided; and you, the said keeper, &c. *(As before, to the end.)*

RECEIVERS OF STOLEN GOODS.

By the 3. *W. c.* 9. § 4. If any person shall buy or receive any stolen goods, knowing the same to be stolen; he shall be deemed an accessory after the fact. And by the 5. *An. c.* 31. § 5. If any person shall buy or receive any stolen goods, knowing them to be stolen, or shall receive, harbour or conceal any felons or thieves, knowing them to be so, he shall be deemed an accessory. And by the 4. *G. c.* 11. § 1. Persons convicted of receiving or buying stolen goods, knowing them to be stolen, may be transported for 14 years. And notwithstanding that regularly the accessory cannot be tried, till the principal be convicted, yet by the 5 *An. c.* 31. §. 6. It is enacted, that if the principal felon cannot be taken so as to be prosecuted and convicted, yet nevertheless the

buyer and receiver of stolen goods may be prosecuted as for a *misdemeanor*, and punished by fine and imprisonment or other such corporal punishment as the court shall think fit; which shall exempt him from being punished as accessory, if the principal shall be afterwards taken and convicted. By the 29 *G.* 2. *c.* 30. § 1. It is enacted as follows: whereas, the pernicious practice of stealing lead, iron, copper, brass, bell-metal and solder fixed to or lying or being in or upon houses, out-houses, mills, ware-houses, work-shops and other buildings, areas, vaults, yards, gardens, orchards or other places; and also, the stealing of such materials from ships, boats and other vessels, and from off wharfs, quays and other places, is become a great evil, by reason of the difficulty in apprehending and convicting the thieves, and in discovering the buyers and receivers;—it is therefore enacted, that every person who shall buy or receive any of the same, knowing the same to be stolen or unlawfully come by, or shall privately buy or receive any stolen lead, iron, copper, brass, bell-metal or solder, by suffering any door, window or shutter to be left open or unfastened, between sun-setting and sun-rising, for that purpose; or shall buy or receive any of the same, at any time, in any clandestine manner; shall on conviction by due course of law, although the principal felon hath not been convicted, be transported for 14 years. § 2. And one justice, on complaint on oath, by any credible person, that there is cause to suspect that stolen lead, iron, copper, brass, bell-metal or solder is concealed in any dwelling-house, out-house, yard, garden or other place, may by his warrant, cause such place to be searched in the day-time, and if any of the same suspected to be stolen shall be found therein, may cause the same, and the person in whose house or other place the same shall be found, to be brought before two justices; and if such person shall not give an account to the satisfaction of such justices how he came by the same, or shall not in some convenient time to be set by the said justices, produce the party of whom he bought or received the same, he shall be adjudged guilty of a misdemeanor. § 3. And every constable within his constable-wick, beadle, within his district, and watchman, while on duty, shall apprehend every person who may be reasonably suspected of having, carrying or conveying, after sun-setting and before sun-rising, any of the said materials suspected to be stolen or unlawfully come by; and the same, together with such person, as soon as conveniently may be, shall carry before two justices; and if the person so apprehended, shall not produce the party from whom he bought or received the same, or some credible witness to prove upon oath the sale or delivery thereof, or shall not give a satisfactory account thereof to such justices, he shall be adjudged guilty

of a misdemeanor. § 4. In either of which cases, two justices may cause the said materials to be deposited with the church-wardens or overseers of the poor, where the same was found, or in any other convenient place, for any time not exceeding 30 days, and in the meantime may order the said church-wardens, &c., or one of them in every parish, within the bills of mortality, to insert an advertisement in some public newspaper; and elsewhere cause notice to be given by some public cryer, and by fixing on the church or chapel door, notice describing such materials, and where deposited; and if any person can prove his property thereto upon oath to the satisfaction of such two justices, they shall order restitution thereof to the owner, after paying reasonable charges of removing, depositing and giving public notice of the same; and if at the end of the 30 days, no person shall prove his property thereto, the same shall be sold for the best price that can be had, and after deducting the charges aforesaid, half of the remainder shall be given to the person apprehending, and half to the poor. § 5. And every person to whom the same shall be brought and offered to be sold, pawned or exchanged, shall apprehend, secure and carry the party before a justice, (there being reasonable cause of suspicion) and in default, shall be adjudged guilty of a misdemeanor. § 6. And persons for the two former misdemeanors, in having or carrying any of the said goods, shall forfeit for the first offence, 40*s.*—for the second, £4—and for every subsequent offence, £6—and for the other misdemeanor, in not carrying a suspected party before a justice, for the first offence, 20*s.*—second, 40*s.*—and for every subsequent offence, £4—such penalties to be levied by distress; half to the informer and half to the poor, and in default, commitment to the house of correction for one month for the first offence—for the second, two months—and for every subsequent offence, till discharged by the sessions. § 7. The conviction shall be on parchment, and be certified to the next sessions, and then filed; in the form or to the effect following, viz:

—— District, } Be it remembered, that on the —— day of
to wit. } —— in the year —— A. O. was convicted before us —— of the justices of the peace, for —— of a misdemeanor in having in his possession [lead, iron, copper, brass, bell-metal or solder], suspected to be stolen or unlawfully come by, and not producing the party or parties of whom he bought or received the same, nor giving a satisfactory account how he came by the same, (or, in having, carrying or conveying of lead, iron, copper, brass, bell-metal or solder, suspected to be stolen or unlawfully come by), and not producing the party or parties from whom he bought or received the same, nor any credible witness to depose upon

oath, the sale or delivery thereof, and not giving a satisfactory account how he came by the same, or of neglecting to apprehend and secure the person who brought and offered to pawn, sell or deliver lead, iron, copper, brass, bell-metal or solder, suspected to be stolen or unlawfully come by; *as the case may be.)* Given under our hands and seals the day and year aforesaid.

Which conviction shall not be removed by certiorari, but shall be final. § 8. And if any person (out of prison) shall commit any felony by stealing any of the said materials, and afterwards discover two or more buyers or receivers, he shall upon their conviction be pardoned. § 9. And any person concerned in the stealing, (being out of prison) discovering any person to whom he offered to sell, pawn or deliver the same, shall, upon their conviction, not be prosecuted for stealing. § 11. But this shall not repeal any former law for the punishment of such offenders; and persons punished by this act, shall not, for the same offence, be prosecuted by any such former law. By the 30 *G.* 2. *c.* 24. § 7. If any person who shall offer by way of pawn, pledge, exchange or sale, any goods, shall not be able or shall refuse to give a satisfactory account of himself, or of the means by which he became possessed thereof; or if there shall be any other reason to suspect, that such goods are stolen or otherwise illegally or clandestinely obtained, it shall be lawful for any person, his servants or agents to whom the same shall be offered, to seize and detain such person and the said goods, and to deliver him as soon as conveniently may be, into the custody of the constable or other peace officer, who shall immediately convey such person and the said goods before a justice; and if such justice shall, upon examination and inquiry, have cause to suspect, that the said goods were stolen, or illegally or clandestinely obtained, he may commit him to safe custody for any time not exceeding 6 days, in order to be further examined; and if upon either of the said examinations it shall appear to the satisfaction of such justice, that the said goods were stolen or illegally or clandestinely obtained, he shall commit the offender to the common gaol or house of correction, there to be dealt with according to law. § 8 Provided, that if such goods so seized and detained as aforesaid, shall afterwards appear to be the property of the person who offered the same to be pawned, exchanged or sold, or that he was authorized by the owner thereof to pawn, exchange or sell the same; yet, nevertheless, the person who shall so seize or detain the party who offered the said goods, shall be indemnified for having so done.

Advertising or receiving a Reward for helping to recover Stolen Goods.

By 25 *G.* 2. *c.* 36. If any person shall publicly advertise a reward, *with no questions asked*, for the return of things stolen or

lost, or shall make use of words therein purporting, that such reward shall be given without seizing or making inquiry after the person producing such thing; or shall offer to return to any pawn-broker or other, the money lent thereon, or other reward for the return thereof, he, and also the *printer and publisher* of such advertisement, shall respectively forfeit £50, with costs, to him who shall sue in 6 months. And by 4 *G. c.* 11. Whenever any person taketh any money or other reward, directly or indirectly, under pretence, or upon account of helping any person to any stolen goods; he shall (unless he apprehend the felon, or cause him to be apprehended, and brought to trial and give evidence against him,) be guilty of felony in the same manner, as if he had stolen the same. § 4.

Commitment of a Receiver of Stolen Goods with the Principal Felony. (Archbold.)

Home District, } J. P., Esquire, one of His Majesty's justices
to wit. } of the peace, for the said district; to the constable of —— in the said district, and to the keeper of the common gaol at Toronto in the said district. These are to command you, the said constable, in His Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the bodies of A. B. and L. M., charged before me, this —— upon the oath of C. D. and others, for that the said A. B., on the day of —— in the year of our lord, —— at —— in the said district *(here state the larceny, &c., as in ordinary cases)*; and that he the said L. M., afterwards at —— aforesaid, [six brass candlesticks and four pewter dishes, being parcel of] the goods and chattels above mentioned, so as aforesaid, feloniously *(and burglariously)* stolen, taken and carried away feloniously did receive, he the said L. M. then well knowing the said goods and chattels (last mentioned) to have been feloniously (and burglariously) stolen, taken and carried away as aforesaid, against the form of the statute, in that case made and provided, and you, the said keeper, are hereby required to receive the said A. B. and L. M. into your custody in the same common gaol, and them there safely to keep until they shall be thence delivered by due course of law. Herein fail not. Given under my hand and seal, the —— day of —— in the year of our lord, ——.

Against the Receiver only for the Felony. (Archbold.)

Commencement as before] on the —— day of —— in the year of our Lord,—— at —— in the said district, one silver tankard, of the goods and chattels of C. D., by a certain ill disposed

person, then lately before, feloniously stolen, taken and carried away, of the same evil disposed person feloniously did receive, he the said A. B. well knowing the said goods and chattels to have been feloniously stolen, taken and carried away; against the form of the statute in that case made and provided, and you the said keeper, &c. as *ante. to the end.*

RECOGNIZANCE.

A RECOGNIZANCE is an obligation of record entered into before some magistrate or magistrates, duly authorised, with condition to appear at the sessions or assizes, or to keep the peace, &c. If a person refuse to give recognizance, he may be committed. *Dalt. c.* 168. A recognizance must be made to the King; it must contain the names, places of residence, and additions of the principals and sureties, and the penalty in which they are bound: the parties need not sign it; it becomes a matter of record as soon as taken and acknowledged, although not made up by the justice, and only entered in his book. *Dalt. c.* 168. Recognizance, taken for the peace, must be certified to the next sessions, that the party may be called, and if they do not appear they will be estreated: and by stat. 3 *W.* 4. *c.* 3, recognizances taken in felony or misdemeanor, must be delivered to the public prosecutor before, or at the opening of the court. § 2. Or such justices may be fined. § 5. When a charge is made before a magistrate, he may bind over the party making the charge, and prosecute and give evidence, and also all who can give material evidence; and, on their refusal, may commit them. A married woman is incapable of entering into a recognizance; but if she altogether refuse to appear at the sessions and to find sureties for such appearance, when such appearance is essential to the conviction of an offender, she may be committed. The proper course, where a married woman is a material witness, is to bind over her husband or other competent person, as surety for her appearance. *Dickenson Q. S.* 74.: also infants, (that is, persons under 21 years of age,) who cannot legally bind themselves, must procure others to be bound for them, and in default thereof, may be committed. *Chitty's C. L.* p. 91. The usual manner of taking a recognizance, is by calling the parties by name, thus:

You, A. B. acknowledge to owe to our sovereign lord the King, the sum of £20, [*and in case of sureties,*] *(and you, C. D. and E. F. acknowledge to owe to our sovereign lord the King, the sum of* £10 *each,)* to be levied upon your respective goods and chattels, lands and tenements, for the use of our said lord the King, his heirs and successors, if default shall be made in the condition following:

The justice should demand of each party "*if he is content;*" and upon their answering that he is so, the recognizance is complete and the defendant is at liberty to depart.

If the condition of the recognizance is not complied with, it is estreated by the court; but during the sitting of the court, upon the party exhibiting a satisfactory affidavit of any sufficient reason for non-compliance with the terms; it has been the invariable practice for the court, on motion being made for that purpose, to take off the estreat, upon such terms as the court may require, such as entering into a new recognizance, &c. *Dickenson, Q. S.* p. 668.

Condition of a Recognizance to Prosecute. (Archbold.)

The condition of this recognizance is such, that if the above-bounden A. B. shall personally appear at the next general quarter sessions of the peace, *(or at the next general gaol delivery, if intended for the assizes,)* to be holden in and for the said Home district, at the city of Toronto, in the said district, and then and there prefer a bill of indictment against C. D. late of —— laborer, for feloniously stealing, taking, and carrying away *(here mention the property stolen)* the property of A. O., and shall then also give evidence there, concerning the same, as well to the jurors that shall then inquire of the said felony, as also to them that shall pass upon the trial of the said C. D., that then the said recognizance to be void, or else to stand in full force and virtue.

Condition of Recognizance, with sureties to appear and answer in Felony. (Dickenson.)

The condition of this recognizance is such, that if the above-bounden A. B. do and shall personally appear before the justices of our said sovereign lord the King, assigned to keep the peace in and for the said Home district, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said district committed, at the next general quarter sessions, of the peace, to be holden in and for the said district, at the city of Toronto, in the said district, then and there to answer our said sovereign lord the King, for and concerning the felonious taking and stealing a certain *(mentioning the article,)* the property of X. Y., wherewith the said A. B. stands charged on suspicion before (the justices naming them,) and do and receive what, by the court then and there shall be enjoined him, and shall not depart without the court, without leave or licence: then the above written recognizance shall be void, and of none effect, otherwise to remain in full force.

Condition of a Recognizance, by a witness to give evidence.

The condition of the above written recognizance is such, that if the above-bounden E. F. shall personally appear at the next general quarter sessions of the peace, (or gaol delivery,) to be holden at the city of Toronto, in and for the said Home district, and then and there give such evidence as he knoweth, upon a bill of indictment to be exhibited by C. D. of ——, yeoman to the grand jury, against A. B. late of ——, labourer, *(for feloniously stealing the property of the said C. D.)* and in case the said bill be found a true bill, then if the said E. F. shall then and there give evidence to the jurors that shall pass upon the trial of the said A. B., upon the said bill of indictment, and not depart thence without leave of the court; then this recognizance to be void, or else to remain in full force.

REGISTER OFFICE.

By the *35 G. 3. c. 5.* There shall be established in each and every county and riding of this province, wherein it may be deemed at present necessary, and as often after as occasion may require within others, an office for the enregistering of memorials of deeds and instruments by which lands within the same, shall be transferred or disposed of by bargain and sale, enfeoffment, gift, devise, mortgage, or exchange; and it shall be lawful for the lieut. governor to name the place where such register office shall be kept, and to appoint a person of sufficient integrity and ability, to each and every office, under the conditions hereinafter mentioned, who shall faithfully cause a memorial to be enregistered of all deeds and other instruments, by which lands may be transferred or alienated, that shall be presented to him in manner hereinafter mentioned. § 2. That after the grant from the crown to any person or persons, a memorial of all deeds and conveyances, which shall be made and executed; and of all wills and devises in writing whereby any lands may be affected, may, at the election of the party or parties concerned, be registered; and that every deed and conveyance made after any memorial is so registered, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee, for valuable consideration, unless a memorial be registered before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim; and that every devise, by will, of lands mentioned in any memorial registered as aforesaid, made and published after the registering of such memorial, shall be adjudged fraudulent and void against a subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered.

By sec. 3. And when such office shall become vacant by the death, forfeiture, or surrender of any such register, the justices of the peace for the county or riding, assembled at the next general quarter sessions, shall, in open court, draw up a memorial of such vacancy, and transmit the same, without delay, to the lieutenant governor, praying that a person of sufficient integrity and ability may be appointed to the office; and the lieutenant governor shall, within one month after the said memorial shall be received, appoint a successor.

Sec. 4. Every memorial so to be entered, shall be put into writing and brought to said office, and in case of deeds, shall be under the hand and seal of some, or one of the grantors or grantees, his or their heirs, executors or administrators, guardians or trustees, attested by two witnesses, one whereof to be one of the witnesses to the execution of such deed or conveyance, which witness shall, upon oath before the register or his deputy, prove the signing and sealing of such memorial, and the execution of the deed or conveyance mentioned in such memorial; and in case of wills, the memorial shall be under the hand and seal of some, or one of the devisees, his or their heirs, executors or administrators, guardians or trustees, attested by two witnesses, one whereof shall, upon his oath before the said register or his deputy, prove the signing and sealing of such memorial; which oaths, the said register or his deputy are empowered to administer, and shall endorse a certificate thereof, on every such memorial, and sign the same.

Sec. 5. And every memorial shall contain the day of the month and the year when such deed, conveyance or will bears date, and the names and additions of all the parties to such deed, will or conveyance, and the places of their abode, and shall express the lands, tenements or hereditaments contained in such deed, will or conveyance, and the names of all the townships or parishes within the said county or riding where such lands are lying, that are given, granted, conveyed, devised, or any way affected or charged by any such deed, will or conveyance, in such manner as the same are expressed in such deed, &c. or to the same effect; and every such deed, conveyance, will or probate, of which such memorial is to be registered, shall be produced to such register, or his deputy, at the time of entering such memorial, who shall endorse a certificate thereon, and therein mention the certain day, hour, and time on which such memorial is entered; and that the said register, or his deputy shall sign the said certificate, which shall be allowed as evidence of such registry in all courts of record; and every page of such register book, and every memorial entered therein shall be numbered, and the day of the month and the year, and hour of

time of the day when every memorial is registered, shall be entered in the margins of the said register books, and of the said memorial; and shall keep alphabetical calendar of the names of the townships &c. and parties to such memorial. § 8. Every register or his deputy shall attend at his office every day in the year (except Sundays, and the first week in June, and the last week in December, and Passion Week,) between the hours of 9 in the forenoon, and one in the afternoon, for the despatch of business, and shall, when required, make searches concerning all memorials that are registered, and give certificates concerning the same under his hand. § 9. Every such register shall be allowed for the entry of such memorial, 2*s.* 6*d.* if not exceeding 100 words, and 1*s.* for every 100 words above the first 100, and the like fees for the like number of words in every certificate or copy given out of the said office, and for every search, 1*s.* 6*d.* and no more. § 13. A memorial may be registered of deeds, conveyances and wills, executed out of the county wherein the lands lie, upon affidavit sworn before one of the judges or a commissioner duly authorised to take affidavits being brought to the register, of the due execution of such deed, &c. such affidavit to be sworn by one of the witnesses to the execution of such deed. § 15. All memorials of wills registered within 6 months after the death of the testator, shall be valid, and in case such will is contested, then within 6 months after probate shall be obtained, or the impediment removed. By the 45 *G.* 3. *c.* 2. The assignee of any nominee of the Crown, before any patent shall be granted, may register the instrument so executed to him, and such instrument so registered shall have the same effect as if such nominee had at the time been in possession of such patent. By the 58 *G.* 3. *c.* 8. Whenever any person residing in Great Britain or Ireland, or in any British Colony, shall execute any conveyance or will, affecting lands in this Province, a memorial thereof may be registered in the manner directed by the 35 *G.* 3. *c.* 5. § 2. Such memorial shall be registered in case an affidavit thereof shall be sworn before the mayor or chief magistrate of any city, borough or town corporate, in Great Britain or Ireland, or before the chief justice, or judge of the supreme court of any British Colony, shall be brought to the registrar, wherein one of the witnesses to the execution of such deed or conveyance shall have sworn, or shall swear that he or she saw the same, as also the memorial executed; and in case of wills, one of the witnesses to the memorial thereof, shall prove the execution of such memorial. § 3. And where the witnesses to any deed shall be dead, the grantee, his heirs, &c., may prove the execution before the justices in sessions, and the chairman's certificate, witnessed by the clerk of the peace, shall be a sufficient

authority to register the memorial of such deed. § 4. such justices may receive evidence upon oath, and any person guilty of forswearing shall incur the pains and penalties of perjury. Sec. 5. No certificate of any mayor or chief magistrate, &c. aforesaid, shall have any effect unless the seal of such city, &c. shall be affixed thereto. By the 9 *G.* 4. *c.* 21. entitled, "an act to secure to and confer upon certain inhabitants of this Province the civil and political rights of natural born subjects," such persons are required to take the oath of allegiance before the registrar.—See *ante. p.* 15.

RELIGION.

THE christian religion, according to high authority, is part and parcel of the law of England. To reproach or blaspheme it, therefore, is to speak in subversion of the law: and to say that religion is a cheat, manifests plainly a wish and endeavour to dissolve all those obligations whereby civil society is preserved, and is held to be an indictable offence at common law. *R. v. Taylor, cintr.* 293. 3 *Keb.* 607. By the 1 *Edw.* 6. *c.* 1. and 1 *Eliz. c.* 1. It is enacted, that whoever shall revile the sacrament of the Lord's supper, shall be punished by fine and imprisonment. And by 1 *Eliz. c.* 2. §. 4. If any minister shall speak any thing in derogation of the book of common prayer, he shall be liable to heavy penalties. Also, by § 9. of the last stat. If any person shall, in plays, songs or other open words, speak any thing in derogation, depraving or despising of said book; or shall forcibly prevent the reading of it by any clergyman, or compel or cause him to read any other service in its stead, the offender shall forfeit for the first offence, 100 marks; for the second, 400; and for the third, all his goods and chattles, and moreover be liable to imprisonment for life. And by the 3 *Jac.* 1. *c.* 21. If any person shall use the name of the holy trinity profanely or jestingly in any stage-plays, interlude or show, he shall be liable to a *qui tam* penalty of £10. By the 9 & 10 *W.* 3. *c.* 32. It is enacted, that if any person educated in, or having made profession of the christian religion, shall by writing, printing, teaching or advised speaking, deny the christian religion to be true, or the holy scriptures to be of divine authority, he shall for the first offence, be rendered incapable to hold any office or place of trust; and for the second, be rendered incapable of bringing any action; being guardian, executor, legatee or purchaser of lands; and shall suffer 3 years' imprisonment without bail. But if within 4 months after the first conviction, the offender appear in open court and publicly renounce his error, he shall be discharged that once

from all disabilities. The provisions of this statute have been held to be cumulative, and therefore do not prevent the offender from being indicted at common law. *R. v. Carlile*, 3 *B. & A.* 161. By the 14 of *G.* 3. *c.* 83. § 5. It is enacted, that his Majesty's subjects, professing the religion of the church of Rome of and in the province of Quebec, may enjoy the free exercise of their said religion, subject to the King's supremacy declared and established by the 1 *Eliz.* over all the dominions and countries belonging to the imperial crown of this realm: and that the clergy of the said church may hold, receive and enjoy, their accustomed dues and rights, with respect to such persons only as should profess the said religion. And by § 7. the following oath shall be taken by persons professing the said religion in place of the oath required by the stat. of *Eliz.* or any other oaths substituted by any other act in place thereof.

I, A. B. do sincerely promise and swear, that I will be faithful and bear true allegiance to his Majesty King George, and him will defend to the utmost of my power against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown and dignity, and I will do my utmost endeavor to disclose and make known to his Majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts which I shall know to be against him or any of them; and all this I do swear without any equivocation, mental evasion or secret reservation, and renouncing all pardons and dispensations from any power or person whomsoever to the contrary—so help me God.—And every such person refusing to take the said oath, shall incur the penalties, forfeitures, disabilities and incapacities of the 1*st of Eliz.* By the 31 *G.* 3. *c.* 31. § 36. It is enacted, that in all future grants of land from the crown, there shall be a specification of lands of the like quality, and equal in value to 1-7 for the support of a protestant clergy. And by the 1 *W.* 4. *c.* 28. After noticing that doubts had been suggested that the tythe of the produce of land might still be legally demanded by the incumbent; it is enacted, that no tythes shall be claimed, demanded or received by any ecclesiastical parson, rector or vicar, of the protestant church within this province.

REPLEVIN.

By stat. 4 *W.* 4. *c.* 7. entitled "an act to facilitate the remedy by replevin," it is enacted by § 1. that any person complaining of a wrongful distress in any case in which, by the law of England, replevin will lie, may on filing a præcipe, obtain from the office of the clerk of the crown and pleas, or from any of his deputies,

a writ of replevin, in the form marked A. § 2. Before the sheriff shall proceed to replevy upon such writ, he shall take pledges from the plaintiff according to the law of England, and the bond may be given in the form marked B., and the assignment thereof according to the form in the schedule. § 3. Upon the sheriff making return of the goods distrained, having been eloigned, as would warrant the issuing of *a capias in withernam* by the law of England, such writ shall issue upon filing such return from the office of the clerk of the crown and pleas, or his deputies; which writ may be in the form marked C., and before executing such writ the sheriff shall take pledges according to the law of England. § 4. The sheriff may make his warrant to any bailiff or bailiffs, jointly and severally. § 5. After appearance by the defendant, the plaintiff may declare in replevin according to the law of England. § 6. If the defendant shall not appear within eight days after the return of the writ, the plaintiff shall cause a notice to be affixed on the door of the court-house of the district in which such writ shall have issued, according to the form marked D.; and if the defendant shall not appear at the expiration of 21 days, the plaintiff, upon filing an affidavit of the due publication of such notice, may enter an appearance for the defendant, and proceed as if the defendant had appeared. § 7. When the value of the goods distrained shall not exceed £15, and the title to lands shall not be in question, the writ of replevin may issue from the district court, and such proceedings may be had thereon agreeable to the practice of K. B. § 8. The court of K. B. may from time to time regulate the mode of practice in replevin, and modify or alter any of the forms in the act. § 9. In the absence of any provision in this act, or in any rule of the court of K. B. to the contrary, the practice in England in cases of replevin shall be pursued so far as practicable.

SCHEDULE A.—*Form of Writ of Replevin.*

—— District, } William the Fourth by the Grace of God, &c.
to wit. } To the sheriff of ——, greeting:—We command you, that without delay, you cause to be replevied to A. B. his cattle, goods and chattels, which C. D. hath taken and unjustly detains, as it is said, in order that the said A. B. may have his just remedy in that behalf, and that you summon the said C. D. to appear before us in our court of King's bench at York, on the —— day of —— term, to answer to the said A. B. in a plea of taking and unjustly detaining his cattle, goods and chattels, and what you shall do in the premises make appear to us in our court of King's bench, at York, on the day and at the place aforesaid, and have there then this writ.

Witness the honorable ——, chief justice of our said province, this —— day of —— &c.

SCHEDULE B.—*Form of Replevin Bond and Condition.*

Know all men by these presents, that we A. B. of ——,W. G. of ——, and J. S. of ——, are jointly and severally held and firmly bound to W. P. Esq., sheriff of the district of —— in the sum of — of lawful money of Upper Canada, to be paid to the said sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made, we bind ourselves, and each and every of us in the whole, our and each and every of our heirs, executors and administrators, firmly by these presents; sealed with our seals. Dated this —— day of ——, one thousand eight hundred and ——.

The condition of this obligation is such, that if the above bounden A. B. do prosecute his suit with effect and without delay against C. D. for the taking and unjustly detaining of his cattle, goods and chattels, to wit, (here set forth the cattle or goods distrained) and do make a return of the said cattle, goods and chattels, if a return thereof shall be adjudged, that then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.

Sealed and delivered in the presence of ——

Know all men by these presents, that I, W. P. Esquire, Sheriff of the district of ——, have, at the request of the within named C. D. the avowant (or person making cognizance) in this cause, assigned over this replevin bond unto him the said C. D. pursuant to the statute in such case made and provided. In witness whereof, I have hereunto set my hand and seal of office, this —— day of ——, one thousand eight hundred and ——.

Sealed and delivered in the presence of ——.

SCHEDULE C.—*Form of Writ of Capias in Withernam.*

—— District, } William the Fourth by the Grace of God, &c.
to wit. } To the sheriff of ——, greeting:—Whereas we lately commanded you, that without delay, you should cause to be replevied to A. B. his cattle, goods and chattels, to wit, &c. (setting out the cattle and goods,) which C. D. had taken and unjustly detained, as it is said, according to our writ to you afore directed, and that you should make appear to us in our court of King's bench at York, on the —— day of —— term, what you should do in the premises, and you at that day returned to us that the cattle, goods and chattels aforesaid, were eloigned by the said C. D. in your bailiwick to places to you unknown, so that you could in no wise replevy the same to the said A. B.

Therefore we command you that you take in withernam the cattle, goods and chattels, of the said C. D. in your bailiwick to

the value of the cattle, goods and chattels, by him the said C. D. before taken, and deliver them to the said A. B. to be kept by him until the said C. D. will deliver the aforesaid cattle, goods and chattels, to the said A. B. and in what manner you shall have executed this our writ make appear to us on the —— day of —— term, in our court of King's bench, that we may cause to be further done thereupon what of right and according to the laws of our province of Upper Canada we shall see meet to be done. We also command you, that if the said A. B. shall make you secure of prosecuting his claims, and of returning the cattle, goods and chattels aforesaid, if a return thereof shall be adjudged, then that you put by gages and safe pledges the said C. D. that he be before us at the time last aforesaid, to answer to the said A. B. of the taking and unjustly detaining of his cattle, goods and chattels aforesaid, and have then there this writ. Witness ——

SCHEDULE D.—*Form of Notice.*

Take notice that unless A. B. who has distrained the cattle, goods and chattels, of C. D. shall enter his appearance in an action brought against him on account of the said distress, the said A. B. will on or after the —— day of ——, being twenty-one days exclusive after this notice was put up, enter appearance for him to the said action, and proceed therein as if the said C. D. had appeared. Dated ——, A. B. in person, (or by his Attorney) E. F.

RESCUE,

Is defined by *Bl.* 4. *Com. c.* 10. to be the forcibly and knowingly freeing another from arrest and imprisonment; and it is generally the same offence in a stranger so rescuing as it would have been in a gaoler voluntarily suffering an escape; but here as upon voluntary escapes, the principal must be first attainted or receive judgment before the rescuer can be punished; for by possibility there may have been no offence committed. 1 *Hale's P. C.* 607.; nevertheless as the rescue is in contempt of some legal process, the offender may be committed and punished for a misdemeanor, according to the degree of his offence. To hinder a person who has committed felony from being arrested is a misdemeanor only; but if rescued after arrest, and the arrest was for felony, the rescuer is a felon; if for treason, a traitor; and if for a trespass, finable. *Hale Pl.* 116; 2 *Haw. c.* 21; *Russ. & Ry. C. C. R.* 458; but it seems necessary that the rescuer should have knowledge of the

criminal offence, if the party be in custody of a private person, but not necessary if in custody of an officer. 2 *Hale* 606.

Commitment for a Rescue. (TOONE.)

Home District, } To the constable ——, and to the keeper of
to wit. } the common gaol at ——, in the said district.—
Whereas, A. B. of ——, yeoman, and C. D. of ——, labourer, are this day brought before me, J. C., Esq. one of his Majesty's justices of the peace in and for the Home district, and charged on the oaths of E. F. and G. H., constables of ——, with having this day at ——, in the district aforesaid, unlawfully, riotously and against the King's peace, rescued and set at large one J. K., committed to the custody of them the said constables, to be conveyed to the common gaol of ——, for a felony, by virtue of a warrant under the hand and seal of me, the said justice, bearing date the —— day of ——, instant. These are therefore to command you the said constable, forthwith to convey and deliver into the custody of the keeper of the said gaol, the bodies of them the said A. B. and C. D., together with this my warrant. And also to command you the said keeper to receive the said A. B. and C. D. into your custody in the said gaol, and them there safely to keep, until they shall be discharged therefrom by due course of law.—
Given under my hand and seal, &c.

RESTITUTION OF STOLEN GOODS.

By the common law there was no *restitution of stolen goods.* But it being considered that the party prosecuting the offender by indictment, deserved to have his goods restored; it was enacted by the stat. 21 *H.* 8. *c.* 11. that if any felon do rob or take away any man's money or goods, and thereof be indicted and arraigned and found guilty, or otherwise attainted by reason of evidence given by the party robbed or owner of the money or goods, or by any other, by their procurement; then the party robbed, or owner of the goods, shall be restored to such his money or goods; and the justices may award a writ of restitution.

The writ of restitution has fallen into disuse; but, upon production of the goods at the trial, the court will order them to be restored to the owner; and if not restored, he may maintain an action of trover for them, after conviction, notwithstanding they have been sold to the person claiming in *market overt.* 1 *Hale* 543. 6 *Rel.* 48. 2 *Inst.* 714. Although this may seem hard upon the buyer, yet the rule of law is that "*spoliatus debet ante omnia restituti,*" especially when he has used all the diligence in his power to convict the felon. And as the case is reduced to this hard necessity, that either the owner or the buyer must suffer, the law prefers the

right of the owner who has done a meritorious act by pursuing a felon to condign punishment, to the right of the buyer, whose merit is only negative, that he has been guilty of no unfair transaction. 4 *Bl. Com.* 363. However, by the 31 *Eliz. c.* 12. where a horse is stolen, and sold in open market, according to the provisions of the act, the owner can only be entitled to it again upon payment of the buyers costs. See further on this subject, title "Horses," *ante.* p. 226.

If the thief sell the goods and be taken with the money which he sold them for, and the goods cannot be heard of, it has been questioned whether the prosecutor shall have the money. *W. Jones* 148. 2 *East. P. C.* 789. But the better opinion seems to be where it is clearly ascertained that the money is the produce of the goods stolen, that the prosecutor would be then entitled to it, within the equity of the above statute. *Hamberrie's case. Cro. Eliz.* 661. *Harris' case, Noy,* 128. 1 *Hale.* 542. 2 *East. P. C.* 789.

Restitution, however, can only be had from the person in possession of the goods at the time of, or after the felon's attainder. Therefore, if a party purchase them bona fide, in *market overt*, and sell them again before conviction, no action will in this case lie against him for the value, though notice were even given him not to sell. *Horwood v. Smith,* 2 . *R.* 753. But the necessity of prosecuting and convicting or attainting the felon, in order to have restitution, is only when the property is changed by some intermediate act, as when they have been sold in *market overt.* For otherwise the owner may, at common law, peaceably retake his goods wherever he finds them, without any writ of restitution. *Kel.* 48. 2 *Haw. c.* 25.

RIOT, ROUT, &c.

A RIOT is the forcibly doing an unlawful thing by three or more persons assembled together for that purpose. By the common law, peace officers may suppress a riot, and may command all other persons to assist them. 1 *Haw. c.* 65. § 11. A *rout* is where three or more meet together to do some unlawful act upon a common quarrel, as forcibly breaking down fences upon a right claimed of common or way, and make some advances towards it, but without actually executing it. *Ibid.* An unlawful assembly is where three or more assemble themselves together, with intent to do an unlawful act, as to pull down enclosures, &c. but part without doing it, or making any motion towards it. *Ibid.* A riot at *common law*, is a misdemeanor only, punishable by fine and imprisonment. 1 *Haw. c.* 65. § 12. But under particular

circumstances, which will be seen hereafter, it is in some cases, by statute, made felony.

Riot at Common Law, (Misdemeanor.)

If the riotous assembly meet for a public purpose,—as to redress a general grievance; to pull down *all* enclosures; or to reform religion; or with a determination to resist the king's forces, if legally called in to keep the peace;—their proceedings then may amount to overt acts of high treason, by levying war against the King. 4 *Bl. Com.* 147.

To constitute a riot, there must be some circumstances of actual force or violence, or at least of an apparent tendency thereto, which are calculated to strike terror among the people, such as the show of offensive weapons, threatening speeches, or turbulent gestures. But it is not necessary that personal violence should have been actually committed. 1 *Haw. c.* 65. § 5. *Clifford & Brandon*, 2 *Camp.* 369. Nor will it amount to a riot if the object is to do a lawful act, as to remove a nuisance. 1 *Haw. c.* 65. § 8. *R. v. Soley*, 11 *Mod.* 117. 5 *Burn's J. Riot*, § 1. Where a person on seeing others actually engaged in a riot joins himself to them and assists them, he is as much a rioter as if he had at first assembled with them for the same purpose. 1 *Haw. c.* 65. § 3. And whoever encourages, or promotes, or takes part in a riot, whether by words, signs or gestures, or by wearing the badge, or ensign of the rioters, is himself to be considered a rioter; for in this case, all are principals. 2 *Camp.* 370. 4 *Burr.* 2073. 1 *Hale*, 463.

To incite persons to assemble in a riotous manner, appears to be an indictable offence. *Cro. Cir. Camp.* 420. 8 *Ed.* 2 *Chit. C. L.* 506. Women are punishable as rioters; but *infants*, under the age of discretion, are not. 1 *Haw. c.* 5. 65. § 14. Where an infant is indictable, he may appear by attorney. *R. v. Turner*, 2 *Ld. R.* 1284.

Thus much for a riot at *Common Law*.

Riot by Statute, (Felony.)

The statute 1 *G.* 1. *st.* 2. *c.* 5. § 1. commonly called the *riot act*, enacts that if any persons to the number of twelve or more, being unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace; and being required or commanded by any justice of the peace, or the sheriff of the county, or his under-sheriff, or by the mayor, bailiff, or other head officer, or justice of the peace of any city or town corporate,

where such assembly shall be, by proclamation made in the King's name, (in the form directed by the second section of the act) to disperse themselves, and peaceably to depart to their habitations, or to their lawful business—shall, to the number of twelve or more, (notwithstanding such proclamation made) unlawfully, riotously and tumultuously, remain or continue together by the space of one hour after such command or request made by proclamation—the parties so remaining shall be guilty of felony, and suffer death. By sec. 2. The justice (or person authorised as above) shall, among the said rioters, or as near to them as he can lawfully come, with a loud voice command, or cause to be commanded, silence to be, while proclamation is making; and after that, shall openly and with loud voice make, or cause to be made, proclamation, in these words, or like in effect:—

"Our sovereign lord the King chargeth and commandeth all "persons being assembled to disperse themselves, and peaceably "to depart to their habitations or to their lawful business, upon the "pains contained in the act made in the first year of the reign of "King George, for preventing tumults and riotous assemblies. "God save the King."

By sec. 3. Those assembled, and not dispersing within an hour, may be seized; and if they make resistance, the persons killing them shall be indemnified. Sec. 4. And if any persons unlawfully, riotously and tumultuously assembled, shall unlawfully and with force, demolish or pull down, or *begin* to demolish or pull down, any church, chapel, or any building for religious worship, certified and registered according to the statute of the 1 *W. & M.*, or any dwelling-house, barn, stable, or other outhouse, they shall suffer death, without benefit of clergy. Sec. 5. And if any person shall, with force and arms, wilfully oppose, hinder or hurt, any person that shall begin or go to make the proclamation, whereby the same shall not be made, he shall be guilty of felony; and also every person so unlawfully, riotously and tumultuously assembled, to the number of *twelve* or more, to whom proclamation should or ought to have been made, if the same had not been hindered, shall likewise, in case they, or any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such let or hindrance so made—shall be guilty of felony. Sec. 8. Prosecutions under this act must be commenced within twelve months.

By 13 *H.* 4. *c.* 7. Any two justices, with the sheriff or undersheriff, may come with the *posse comitatus*, if necessary, and suppress a riot, and record the circumstances: which record shall be a sufficient conviction of the offenders;—if the rioters are departed,

the justices shall make inquiry within a month afterwards, and hear and determinine the same. Rioters convicted on the view of two justices and the sheriff, may be fined; and the statute requires that the sheriff should join in assessing the fine. *Raym.* 386. When riots are committed, the sheriff, on precept directed to him, shall return twenty-four persons within the district, to inquire thereof. 19 *H.* 7. *c.* 13. And the riot being found by inquisition, the justices shall make a record thereof in writing, which is to remain with one of the justices. *Dalt. c.* 82.

By 3 *W.* 4. *c.* 4. The riot act, 1 *G.* 1., is confirmed in its relation to this province; and it is enacted that the provisions in the fourth clause of the same act shall apply and extend to all churches or chapels or places for religious worship in this province, notwithstanding the same, or any of them, shall not be *certified or registered* as provided in the said act.

Record of a Riot on view. (BURN.)

—— District, } Be it remembered, that on —— day of ——,
to wit. } in the —— year of the reign, &c. we, J. C. and S. P., Esqrs. two of the justices of our said lord the King, assigned to keep the peace in the —— district, and J. P., Esq., sheriff of the said district, on the complaint and at the request of A. B. of ——, in the district aforesaid, Esq. in our proper persons, have come to the mansion house of him the said A. B., at —— aforesaid, and then and there do find C. D. of ——, yeoman, E. F. of ——, yeoman, G. H. of ——, yeoman, and other malefactors and disturbers of the peace of our said lord the King, to us unknown, in a war-like manner arrayed; to wit, with clubs, swords and guns, unlawfully, riotously and routously assembled and the same house besetting, many evils against him the said A. B., threatening, to the great disturbance of the peace of our said lord the King, and terror to his people, and against the form of the statute in that case made and provided; and therefore we, the aforesaid J. C. and S. P., and J. P., the aforesaid C. D., E. F. and G. H. do then and there cause to be arrested and to the next gaol of our said lord the King in the district aforesaid, to be conveyed, by our view and record of the unlawful assembly, riot and rout aforesaid convicted; there to remain every and each of them respectively, until they shall severally and respectively have paid to our said lord the King the several sums of £10 each, which we do impose upon them and every of them separately, for their said offence. In testimony whereof to this our present record, we do put our seals. Dated at —— aforesaid, the day and year aforesaid.

Commitment of Rioters on view. (Burn.)

—— District, } J. C. and S. P., Esqrs. two of the justices of
to wit. } our sovereign lord the King, assigned to keep the peace within the ——— district, and J. P., Esq., sheriff of the said district. To the keeper of the gaol of our said lord the King, at ———, in the said district, and to his deputy and deputies there, and to every of them greeting:—Whereas, upon complaint made unto us by A. B. of ———, Esq., we did this present ——— day of ———, go to the house of the said A. B. at ——— aforesaid, and there did see C. D. of ———, yeoman, E. F. of ———, yeoman, and G. H. of ———, yeoman, and other malefactors to us unknown, assembled together in an unlawful, riotous and routous manner, to the terror of the people and against the peace of our said lord the King; and against the form of the statute in such case made and provided: we do therefore send you by the bringers hereof, the bodies of the said C. D., E. F. and G. H., convicted of the said riot, rout and unlawful assembly, by our own view, testimony and record; commanding you in the name of our said lord the King, to receive them into the said gaol and them and every of them respectively, there safely to keep until they and every of them shall respectively pay to our said lord the King, the several sums of — each, which we have set and imposed upon them and each and every of them separately, for the said offence. Given under our hands and seals at ———, &c.

Precept to Summon a Jury. 19 *H.* 7. *c.* 13. (Burn.)

—— District, } J. C. and S. P., Esqrs., two of the justices of
to wit. } our lord the King, assigned to keep the peace in the ——— district, and also to hear and determine divers felonies, trespasses and other misdeeds, in the said district committed. To the sheriff of the said district, greeting:—On the behalf of our said lord the King, we command you, that you cause to come before us, J. C. and S. P. at ———, in the district aforesaid, on the ——— day of ——— next ensuing, twenty-four honest and lawful men of the district aforesaid, every one of which to have lands and tenements within the said district, of the yearly value of 20*s.* of charter land, or of freehold, over and above all charges; to inquire for our said lord the King, and for our indemnity in this behalf, upon their oath of certain riots, routs and unlawful assemblies at ———, in the district aforesaid, lately committed, as it is said, and that you return upon every person so by you to be impannelled, 20*s.* of issues at the aforesaid day, to be by them respectively forfeited if they shall not appear and be sworn to inquire of the premises at the same time and place;—and this you shall in

nowise omit, on pain of £20. Given under our hands and seals, at ——— aforesaid, the ——— day of ———, in the ——— year of the reign of King William the fourth.

Foreman of the Jurors' Oath.

You shall true inquiry and presentment make of all such things as shall come before you, concerning a riot, rout and unlawful assembly, said to have been lately committed at ——— in this district; you shall spare no one for favor or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you. So help you God.

Juror's Oath.

The oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your parts. So help you God.

The Inquisition, Indictment or Presentment of a Jury. (Burn.)

—— District, } An inquisition for our lord the King, indented
to wit. } and taken at ——— in the ——— district, the ——— day of ———, in the ——— year of the reign of his present Majesty King William the fourth, by the oath of ——— honest and lawful men of the district aforesaid, before J. C. and S. P., Esqrs. justices of our said lord the king, assigned to keep the peace in the said district, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said district committed, who say upon their oath aforesaid, that C. D. of ———, yeoman, E. F. of ———, yeoman, and G. H. of——— yeoman, together with other malefactors and disturbers of the peace of our said lord the King, to the jurors aforesaid as yet unknown, on the ——— day of ———, now last past, at ——— aforesaid, in the district aforesaid, with force and arms, to wit, with clubs, swords and guns, unlawfully, routously and riotously did assemble to disturb the peace of our said lord the King and so being then and there assembled and gathered together, the mansion house of A. B., Esq. at——aforesaid, unlawfully, routously and riotously did enter, and in and upon him the said A. B., then and there unlawfulty, routously and riotously did make an assault, and him the said A. B. then and there routously and riotously did beat, wound and ill treat in disturbance of the peace of our said lord the King, and to the terror of his people, and against the form of the statute in such case made and provided. We, whose names are hereto set, the above jurors, do find this inquisition true—J. K.; L. M.; N. O.; P. Q.; R. S.; T. U.; &c.

We, the justices abovesaid, do hereby impose the fines hereunder written on the aforesaid offenders, C. D. £20,
E. F. £20,
G. H. £20,

Indictment for a Riot and Assault. (Archbold.)

Home District, } The jurors for our lord the King, upon their
to wit. } oath present that J. S, late of the township of —— in the Home district, labourer, J. W., late of the same, carpenter, E. W., late of the same, yeoman, together with divers other evil disposed persons, to the number of three, and now to the jurors aforesaid unknown, on the——day of——in the—— year of the reign of our sovereign lord William the fourth, with force and arms, at the township aforesaid, in the district aforesaid, unlawfully, riotously and routously did assemble and gather together, to disturb the peace of our said lord the King, and being so then and there assembled and gathered together, in and upon one A. the wife of J. N., in the peace of God and of our lord the King, then and there being unlawfully, riotously and routously did make an assault, and her the said A. then and there unlawfully, riotously and routously did beat, wound and ill-treat, so that her life was greatly despaired of, and other wrongs to the said A. then and there unlawfully, riotously and routously did: in contempt of our said lord the King and his laws, to the evil example of all others in the like case offending, and against the peace of our lord the King, his crown and dignity.—*(Add also another count for a common assault.)*

Indictment for a Riot and Tumult. (Archbold.)

Commencement as in the last form,] &c. with force and arms, to wit,—with sticks, staves, and other offensive weapons, at the township aforesaid, in the district aforesaid, unlawfully, riotously, and routously did assemble and gather together, to disturb the peace of our said lord the King: and being so assembled and gathered together, armed as last aforesaid, did then and there unlawfully, riotously and routously make a great noise, riot and disturbance, and did then and there remain and continue armed as last aforesaid, making such noise, riot and disturbance for the space of an hour and more, then next following, to the great disturbance and terror, not only of the liege subjects of our said lord the King, there being and residing, but of all other the liege subjects of our said lord the King then passing and repassing in and along the King's common highway, there, in contempt of our said lord the King and his laws—to the evil example of all others in the like

case offending, and against the peace of our lord the King, his crown and dignity.

Commitment for a Riot and Feloniously Beginning to Demolish a House. (Toone.)

To the keeper of

—— to wit.—Receive into your custody the body of E. F. herewith sent you, brought before me J. C. Esq. one of his Majesty's justices of the peace for the —— district, and charged by A. B. before me the said justice, upon oath, with unlawfully, riotously, tumultuously and feloniously assembling, with divers other persons, to the disturbance of the public peace, at —— in the said district, on —— the —— day of —— 18——, and with force and arms beginning to demolish and pull down a certain dwelling-house there situate, belonging to A. B. Esquire, contrary to the statute, &c.

The like for Rioters remaining an hour together after the Riot Act has been read. (Archbold.)

Commencement as before,] on the —— day of —— in the year of our Lord 18——, at ——, in the said district, together with divers other evil disposed persons, unlawfully, riotously, and routously did assemble and gather together; and notwithstanding proclamation made in that behalf by one of his Majesty's justices of the peace for the said district, commmanding and requiring them to disperse themselves, and peaceably to depart to their habitations or to their lawful business, the said A. B., C. D. and E. F., together with other persons to the number of *twelve* and more, feloniously, riotously, and tumultuously did remain and continue together by the space of one hour after such command so made by the said proclamation as aforesaid. And you the said keeper, &c.

RIVERS AND NAVIGATION.

A navigable river is, with respect to the right of the public to pass along it for the conveyance of themselves or their goods and merchandizes, in the nature of a public highway. 1 *Haw. c.* 76. § 1. 3 *Com. Dig.* 23. A nuisance occasioned to a public river, by obstruction, is indictable on the same principle as a similar nuisance to a highway. Thus, the *laying of timber* in a public river, whereby the passage of vessels is obstructed, is as much a nuisance as laying logs in a highway. 5 *Bac. Ab. nuisance, (A.)*

ROBBERY.

ROBBERY signifies a larceny from the person, committed openly and violently; and may be defined to be, the felonious and forcible taking of goods or money of any value from the person of another, or in his presence, against his will, by violence, or putting him in fear. 4 *Bl. Com.* 243. 2 *East P. C.* 797.

Of the Felonious taking.

The gist of the offence being the force and terror used by the offender, the value of the property stolen is quite immaterial; for a penny as well as a pound, forcibly taken or extorted, constitute in law a robbery. 3 *Inst.* 69. 1 *Hale* 532. 1 *Haw. c.* 34. § 16. 4 *Bl. Com.* 243. The taking also must be such, as to give the robber a *possession* of the property stolen. Therefore, if a man having his purse fastened to his girdle be assaulted by a thief, and the thief, in order the more readily to take the purse, cut the girdle and the purse thereby fall to the ground, this is no taking so as to amount to robbery, for the thief never had the purse in his possession: but, if he had taken it up from the ground, though but for one moment, and afterwards let it fall in the struggle, this would then have been a sufficient taking, the purse having been once in his possession. 3 *Inst.* 69. And when once the offence of robbery is completed it cannot be purged by a re-delivery.—There may be a taking in law, however, as well as a taking in fact, which will amount to robbery. Thus, if upon A. assaulting B. and bidding him deliver his purse, A. refuse to do so; and then A. pray B. to give or lend him money, and B. does so accordingly, under the influence of fear, the taking will be complete. 1 *Hale* 533. So, when thieves finding no property on a man, force him by menace of death to fetch them money, which he delivers to them while the fear of the menace continues upon him, and they receive it, this is a sufficient taking in law. *Id.* 3. *Inst.* 68. The taking however, need not be immediately from the person—it is enough, if it be *in his presence.* Thus, if A. upon being attacked by a robber, throws his purse or his cloak into a bush, or lets his hat fall while he is endeavouring to escape, and the thief takes either of these things up and carries it away, such a taking being done in the presence of A., will amount to robbery. 3 *Inst.* 68. 1 *Hale* 533. 1 *Haw.* 34. § 6. But no stealing will amount to robbery, unless done in the presence of the owner. *R. v. Grey,* 2 *East P. C.* 708.

What Violence or Fear is necessary.

The principle of robbery being violence, some degree of force is therefore necessary to constitute the offence. But there may be a constructive, as well as an actual force, for where such *terror* is impressed on the mind as not to leave the party a free agent, and in order to get rid of that terror he delivers his money, this is a sufficient force in law. And where actual violence is used, there need not be actual fear, for the law will presume it. *Donally's case.* 2 *East P. C.* 727. With respect to the degree of violence, where there is no putting in fear, the amount of force used in such cases must be something more than a sudden taking or snatching, for unless some greater force is used by the thief to overpower or prevent resistance, or there is some resistance, or actual struggle on the part of the owner to retain his property, this will not amount to a robbery, being divested of both the main ingredients of the crime, *corporal violence and terror. R. v. Macauley*, 1 *Leach* 287. *R. v. Baker, Id.* 290. *R. v. Robins, Id.* 290. *note (a.) R. v. Steward*, 2 *East P. C.* 702. But if any injury be done to the person, or there is any struggle of the owner to retain his property, then it is robbery. As where a lady's ear-ring was pulled so violently from her ear, that the ear was torn through and made to bleed, and she was otherwise much hurt. *R. v. Lapier*, 1 *Leach.* 320. And so where the prisoner pulled the prosecutor's watch from his fob, which being fastened by a steel chain round his neck, the thief with two jerks broke the steel chain, in order to get the watch, for the prisoner in this case had to overcome the resistance made by the steel chain, and used actual force for that purpose. *R. v. Mason, R. & Ry.* 419. The violence used also will not the less amount to robbery, because it is accompanied by some specious pretence of law or justice: thus where the prosecutor was carrying his cheeses along the highway, and was stopped by the prisoner, who insisted on seizing them for want of a permit —which was found to be a mere pretence, no permit being necessary—and on some altercation, they agreed to go before a magistrate to determine the matter, when other persons who were riotously assembled, and in confederacy with the prisoner, carried away the goods in the absence of the prosecutor, this was held to be robbery: and the first seizure of the cart and goods by the prisoner was sufficient to constitute the offence. *Merriman v. Hundred of Chippenham*, 2 *East P. C.* 709. With respect to a constructive violence by *putting in fear*, it matters not whether the fear excited, is of injury to the *person*, the *property* or the *character* of the party robbed. As if a person with a drawn sword or other circumstances of terror, indicating a felonious intent, beg

alms of another, who gives it to him through mistrust and misapprehension, this pretence of asking charity will not prevent the offence from being considered as robbery. 4 *Bl. Com.* 244. 2 *East P. C.* 711. The *degree* of fear need not be the extremest state of alarm or terror, but only such a reasonable apprehension of danger, as may induce a man, for his own safety, to part with his property. So where a man is compelled through fear to part with his money, in order to prevent his *house* or *property* from being burnt or destroyed, this will be a sufficient putting in fear, to make the offence of those who take his money amount to the crime of robbery. So where a person is induced to part with his money through fear, upon the threat of another to accuse him of an unnatural offence, or any other crime, whereby his character or reputation may be injured; extorting money under a threat of this description, will amount to the crime of robbery; and whether the party threatened has been guilty of the crime or not. *R. v. Gardiner*, 1 *C. & P.* 79.

Of Principals and Accessories.—(And see *ante.* Accessories.)

With respect to persons aiding and abbetting in a robbery, the same rules are applicable as in every case of principal and accessory. Thus, where several persons come to rob a man, and they are all *present*, whilst one of them takes his money, they are all guilty of robbery. So, if three persons come to commit a robbery, and one stand sentinel at the corner of a field to watch if any one should approach, while the others commit the robbery, this will be a robbery in the third also, though he stood at a distance from them, and not within view. 1 *Hale* 534. 537. But though several come out with a common design to rob in the highway, yet if one of the party (before any robbery takes place) entirely leaves them, and goes another way, rendering them no manner of assistance, either at the time or after the commission of a robbery by the others, he cannot then be said to be guilty, either as principal or accessory. *R. v. Hyde*, 1 *Hale* 537.

Of Assaults with intent to Rob.

By 7 *G.* 2. *c.* 21. § 1. If any person shall, with any offensive weapon or instrument, unlawfully and maliciously assault, or shall by menaces, or in or by any violent or forcible manner, demand any money, goods or chattels, of or from any person or persons, with a felonious intent to rob, or commit robbery upon such person or persons, that then and in every such case, all and every such person or persons so offending, shall be adjudged guilty of felony, and shall be liable to be transported as in cases of felony.

Commitment for a Robbery. (Archbold.)

Commencement as ante. p. 117.)—on the —— day of ——, in the year of our Lord, one thousand eight hundred and —— at —— in the said district, in and upon the said C. D., feloniously did make an assault, and him the said C. D. in bodily fear and danger of his life feloniously did put, and ten pieces of the current gold coin of this province, called sovereigns, and one gold watch, of the monies, goods and chattels of the said C. D. from the person and against the will of said C. D. feloniously and violently did steal, take and carry away. And you the said keeper, &c. *(as ante. p.* 117.)

Commitment for an Assault with intent to Rob. (Archbold.)

Commencement as ante. p. 117.)—on the —— day of ——, in the year of our Lord, one thousand eight hundred and —— at —— in the said district, in and upon the said C. D. feloniously did make an assault, with intent then and there the monies, goods and chattels, of the said C. D. from the person and against the will of the said C. D. feloniously and violently to steal, take and carry away, against the form of the statute in that case made and provided. And you the said keeper, &c. *(as ante. p.* 117.)

Sabbath.—*(See "Lord's Day," ante. p.* 307.)

SACRILEGE.

Sacrilege (sacrilegium) is at common law, the robbery of a church, or a felonious taking out of a holy place, things consecrated to pious purposes; as the vessels, goods or ornaments, of the church. 3 *Cro.* 153. But to steal any thing belonging to private persons in a church, is *larceny*, and not sacrilege. Sacrilege was originally punished with greater severity than other robberies, by our law; for it denied the benefit of clergy to a person convicted of this offence, which was formerly granted to all other felons. 2 *Inst.* 250. 23 *H.* 8. *c.* 1. § 3. 1 *Ed.* 6. *c.* 12. § 10.—But under the 3 *W.* 4. *c.* 4. which defines the number and description of crimes that shall be punished with death,—sacrilege not being included, is no longer a *capital* offence, but is now punishable as any other common felony.

SALMON.

By 2*G.* 4. *c.* 10. § 2. No salmon or salmon fry shall be taken or killed, from the 25th day of October to the 1st January, *(repealed* by

the 4 *G.* 4. *c.* 20.) § 3. No person shall fish by torch-light, within 100 yards of any mill or dam. § 4. No salmon or salmon fry shall be taken in the Home district, district of Newcastle, and district of Gore, nearer the mouth of any river or creek, along the shore of Lake Ontario, than 200 yards, or within 50 yards up the mouth of any such river or creek, except the Credit, in the Home district, and there not within 200 yards up the mouth of the said river. § 5. None to be taken by nets or wears in any of the creeks and rivers in said districts. § 6. Any person convicted of any offence under this act, before two or more justices, by oath of one or more witnesses, other than the informer, shall forfeit and pay not less than 5*s.* nor more than £5 for every offence, with reasonable costs, and in default of payment, be committed to the common gaol for not less than two days, nor more than thirty days, unless the same shall be paid. § 6. One moiety of the fines shall be paid to the informer and the other to the province. § 8 This act shall not extend to any other part of the Gore district, than is comprised within the township of Trafalgar, and that part of the township of Nelson which lies north of the beach, between Burlington bay and lake Ontario: and shall not prevent Indians fishing as heretofore, except within 100 yards of a mill or mill dam, by fire or torch-light. By 4 *G.* 4. *c.* 20., the 2d § of the 2 *G.* 4 *c.* 10. is repealed, and it is enacted, that it shall not be lawful to take any salmon or salmon fry, from the 10th November till the 1st of January. § 2. Extends the provisions of 2 *G.* 4. to the whole of the river Trent. § 4. Prohibits the buying of any salmon from the Indians, within the periods prohibited under the penalty as any person shall be subject to for infringing the provisions of said act 2 *G.* 4. § 5. One half of any fines under this act shall be paid to the informer and the other to the use of the province.

The forms necessary in proceedings to recover any of the penalties under these acts, will be found under their general titles of "Information," "Summons," "Conviction" "Distress Warrant" and "Commitment."

SEARCH WARRANT.

It seems that formerly it was not unusual for justices to grant general warrants to search all suspected places for stolen goods; yet such practice is generally condemned by the best authorities; and Lord Hale, in his pleas of the crown, says, a general warrant to seach for felons, or stolen goods, is not good. *H. Pl.* 93. Likewise, upon a *bare surmise* a justice cannot legally grant a warrant to break any man's house to search for a felon or stolen goods. 4 *Inst.* 177. But in case of a complaint, and oath made,

of goods stolen, and that the complainant suspects the goods are in a certain house or place, and shews the ground of his suspicion, the justice may grant a warrant to search in those suspected places mentioned in his warrant, and to attach the goods and the party in whose custody they are found, and bring them before him, or some other justice, to give an account how he came by them; and further, to abide such order as to law doth appertain. 2 *H. H.* 113. 150. But in case not merely of probable suspicion, but of positive proof, it is right to execute the warrant in the *night time*, lest the offenders and goods also, be gone before morning. *Barl. search W.* Such warrant must be directed to the *constable*, or a peace officer, and not to any private person; though the complainant may aid and assist, because he knows the goods. 2 *H. H.* 150. Whether the stolen goods are in a suspected house or not, the officer, and his assistants, in the day time, may enter, the doors being open, to make search, and it is justifiable by this warrant. 2 *H. H.* 151. If the door be shut, and upon demand, it be refused to be opened by them within, if the stolen goods be in the house, the officer may break open the door. 2 *H. H.* 151. If the goods be not in the house, yet it seems the officer is excused that breaks open the door to search, because he searched by warrant, and could not know whether the goods were there, till search made; but it seems the party that made the suggestion is punishable in such case; for, as to him, the breaking of the door is, *in eventu*, lawful or unlawful, to wit—lawful, if the goods are there; unlawful, if not there. 2 *H. H.* 151. On the return of the warrant, if it appear the goods were not stolen, they are to be restored to the possessor; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hands of the constable; to the end that the party robbed may proceed, by indicting and convicting the offender, to have restitution. 2 *H. H.* 151. As touching the *party* that had the custody of the good, if they were not stolen, then he is to be discharged; if stolen, but not by him, but by another that sold or delivered them to him, if it appear that he was ignorant that they were stolen, he may bedischarged as an offender, and bound over to give evidence, as a witness against him that stole them; if it appear that he knew they were stolen, he must be committed or bound over to answer the felony. 2 *H. H.* 152.

Information to obtain a Search Warrant for Goods. (Toone.)

—— to wit: Be it remembered that this —— day of ——, in the year of our Lord 18——, A. B. of —— in his proper person, cometh before me, J. C. Esq. one of his Majesty's justices, &c. and upon oath maketh complaint, that on the —— day of ——, (or within —— days, as the fact is,) divers goods and chattels of him,

the said A. B. of the value of —— to wit:—*(describe the goods stolen,)* were feloniously stolen, taken and carried away, from and out of the dwelling-house of him, the said A. B., situate at —— aforesaid, in the district aforesaid, by some person or persons unknown; and that he hath just cause to suspect, and doth suspect that the said goods and chattels, or some part thereof, are concealed in the dwelling-house of E. F. of —— in the said district, laborer, for he, the said A. B. upon his oath, doth depose and say that, *(state the grounds of suspicion, which must be reasonable,)* and thereupon the said A. B. prayeth that justice may be done in the premises. A. B. Taken before me, J. C.

Form of a Search Warrant.

Upper Canada, } To the constable of——
Home District, } Whereas it appears to me, R. S. Esquire, one of the justices of our lord the King, assigned to keep the peace in the said district, by the information of —— of ——, in the said district, yeoman, that certain goods and chattels, to wit:—[here name them,] have within —— days last past, by some person or persons unknown, been feloniously stolen, taken and carried away out of the house of the said ——, at —— aforesaid, in the district aforesaid; and that the said —— hath probable cause to suspect, and doth suspect that the said goods and chattels, or some part of the same, are now concealed in the dwelling-house of ——— of ———, in the district aforesaid, yeoman: These are therefore, in the name of our said lord the King, to authorise and require you, with necessary and proper assistants, to enter in the day time into the said dwelling-house of the said ———, at ——— aforesaid, in the district aforesaid, and there diligently to search for the said goods and chattels; and if the same, or any parts thereof, shall be found upon such search, that then you bring the goods and chattels so found, and also the body of the said ——— before me, or some other of the justices of our said lord the King, assigned to keep the peace in the said district, to be disposed of and dealt with according to law. Given under my hand and seal at —— aforesaid, in the said Home district, the —— day of ——, in the year of our Lord 18—.

SEDITION.

SEDITION is understood to comprise within its meaning, all offences against the King and the government, which are not capital, and do not amount to the crime of high treason. It includes all offences of like tendency with treason, but without any such direct intent or overt act of the party formed or executed, as to bring it within the more serious offence. All contempts against the king

and his government, and riotous assemblies for political purposes, may be ranked under the head of sedition; though it has been held, that when the object of the riot is to redress a general grievance, as to pull down *all* enclosures, or to reform religion, or the like, it may then amount to an overt act of high treason; being in the nature of a levying of war against the king: and see ante 'Riot,' p. 393: and in general, it may suffice to remark, that all contemptuous, indecent or malicious observations, upon the person of the king or his government, whether by writing or speaking, or by tokens calculated to lessen him in the esteem of his subjects, to weaken his government or to raise jealousies of him amongst the people, will fall under the notion of sedition; as well as all direct or indirect acts or threats, tending to overcome his measures or disturb the course of his government, not amounting to overt acts of treason. All these attempts are highly criminal at common law, and are punishable with fine and imprisonment. 4 *Bl. Com.* 147. 1 *Haw. c.* 65. § 6. 1 *E. P. C.* 76.

SERVANTS.

By 32 *G.* 3. *c.* 56. Any person falsely personating any master or mistress, or giving a false character, or any servant offering a false character, shall forfeit £20, to be recovered before two justices upon oath of one witness. A servant may be discharged at a moment's warning for immorality, or gross misconduct. *R. v. Brampton, Cald.* 11. Or for wilful disobedience of orders. *Spain v. Amott,* 2 *Star. Rep.* 256. And if a servant of his own accord go away before his time expires, he runs the risk of losing all his wages. *Dalt. c.* 58 *p.* 141. And when discharged for misconduct, will be entitled only to wages due at the time of his discharge. 3 *Esp.* 235. If a servant, however, not having been guilty of any misconduct, be discharged without warning, he is entitled in such case, if hired by the month, to a month's wages above those that may be due. 2 *Sel. N. P.* 1032. By the 20 *G.* 2. *c.* 19. All complaints, differences and disputes, between masters or mistresses, and servants in *husbandry*, hired for a year *(or for less time, by* 31 *G.* 2. *c.* 11.) or between masters and mistresses and artificers, handicrafts-men, miners, colliers, keel-men, pit-men, glass-men, potters and *other labourers*, employed for any certain time, or in any other manner, shall be determined by *one* justice, where the master or mistress shall inhabit; which justice shall examine on oath, any such servant, or other the said persons, or any other witness, touching such complaint, and make such order for payment of wages as to him shall seem just and reasonable, not exceeding £10, with regard to any servant, nor £5, with regard

to any other persons; and in case of non-payment for 21 days, such justice may issue his warrant of distress—and by the same statute, such justice, on application or complaint on oath, by any master or mistress, or employer against any such servant, &c. *or labourer*, concerning any misdemeanor, miscarriage or ill behaviour, in such his service or employment, may hear and determine the same, and punish the offender by commitment to the house of correction, there to remain and be corrected, and held to hard labour, not exceeding one calendar month; or otherwise by abating some part of his wages, or by discharging such servant, or other the said persons from their service or employment, with power of appeal to the next sessions, who may award costs to either party, not exceeding 40*s.* and no certiorari shall be allowed. § 6. By the 6 *G.* 3. *c.* 25. If any artificer, calico-printer, handicrafts-man, miner, keel-man, pit-man, glass-man, potter, *labourer* or other person, shall contract with any person for any time or term, and shall absent himself from his service, before the term of his contract shall be completed, or be guilty of any other misdemeanor, it shall be lawful for one justice of the county or place where the offender shall be found, on complaint upon oath to him made by such master, or by his steward or agent, to issue his warrant to apprehend such person complained of, and to examine into the nature of the complaint, and if it shall appear to such justice, that the person complained of, hath not fulfilled his contract, or hath been guilty of any misdemeanor, the said justice shall commit him to the house of correction for the county or place where such justice shall reside, for any time not exceeding three months, nor less than one month; and any person aggrieved by such determination, order or warrant of the justice, (except any order of commitment) may appeal to the next sessions, giving six days' notice to the justice and to the parties, and entering into recognizance within three days after notice before a justice, with sufficient surety to try the appeal at and abide the order of sessions.

Complaint of a Master against a Servant for misbehaviour, on the 20 *G.* 2. *c.* 19. *and* 6 *G.* 3. *c.* 25. (Burn.)

Home District, } Be it remembered, that this —— day of —— in
to wit. } the —— year of the reign of our sovereign lord William the fourth, A. M. of the township of —— in the county of —— in the home district, husbandman, complaineth and maketh oath before me, J. P. Esq., one of his Majesty's justices of the peace in and for the said district, that A. S. late of —— aforesaid, in the county and district aforesaid, servant in husbandry *(or labourer)* to him the said A. M. hath in his said

service *(or employment)* been guilty of divers misdemeanors, miscarriages and ill behaviour, towards him the said A. M. and particularly [*relating the facts, as the case may be*] and thereupon he the said A. M. prayeth that justice may be done.

Before me, A. M.

J. P.

Warrant for the Servant or Labourer thereupon. (BURN.)

Home District, to wit. } To the Constable of ——

Whereas information and complaint hath been made unto me —— one of his Majesty's justices of the peace in and for the said district, upon the oath of A. M. of —— husbandman, that A. S. late of —— servant in husbandry *(or labourer)* to him the said A. M. hath in his said service *(or employment)* been guilty of divers misdemeanors, miscarriages and ill behaviour, towards him the said A. M. and particularly &c. (*as the case may be*): These are therefore to command you, forthwith to bring the said A. S. before me, to answer unto the said complaint, and to be further dealt with according to law. Given under my hand and seal the—— day of—— in the—— year of the reign of——

The conviction may be in the general form found under the title of 'Conviction.'

Commitment of the Servant to the House of Correction thereupon. (BURN.)

Home District, to wit. } To the Constable of —— in the said district, and to the Keeper of the house of correction, at —— in the said district. Whereas information and complaint hath been made &c. [*reciting the facts set forth in the information*] and whereas, in pursuance of the statute in that case made and provided, I have duly examined the proofs and allegations of both the said parties touching the matter of the said complaint, and upon due consideration had thereof, have adjudged and determined that, he the said A. O. hath in the service of the said A. M. as aforesaid, been guilty of divers misdemeanors, miscarriages and ill behaviour, towards him the said A. M. and particularly [*here set forth the special offence or offences*]: These are therefore to command you the said constable, forthwith to convey the said A. S. to the said house of correction, at —— aforesaid, and to deliver him to the keeper thereof, together with this warrant: and I do hereby command you, the said keeper, to receive the said A. S. into your custody, in the said house of correction, there to remain and be corrected, and held to hard labour for the space of one calendar month (*or for a lesser time if under the* 20 *G.* 2. *c.*

19.; *or for three months or a lesser time, but not less than one month, if under the* 6 *G.* 3. *c.* 25.) from the date hereof, and for your so doing this shall be your sufficient warrant. Given under my hand and seal, the —— day of —— in the —— year of the reign ——.

Or otherwise, under the 20 *G.* 2. *c.* 19. *he may be punished by abatement of Wages, as follows.* (Burn.)

The same as above to the end of the adjudication] I do therefore hereby order as a punishment for the said offence (*or offences*) that the said A. S. shall abate from his wages, to be paid to him by the said A. M. the sum of —— and do hereby discharge the said A. M. from the payment of the said sum of —— as part of the wages of him the said A. S. Given under my hand and seal, this —— day of ——.

SESSIONS.

The sessions of the peace is a court of record, holden before two or more justices, for the execution of their general authority, given them by the commission of the peace, as well as by certain statutes. *Lamb.* 379. *Dalt.* 456. There must also be two justices (at the least) present, in order to adjourn the sessions legally; and two justices also to hold an adjournment. *R. v. Westington.* 2 *Bott.* 733. 1 *Bl. Com.* 354. *n.* When the sessions is adjourned, the style of the court ought to run thus—"at such a session held by adjournment:" but the original meeting of the sessions should be first set forth, and then it should be stated that the sessions were "continued from thence to such further time by adjournment." 2 *Str.* 832. 865. *R. v. Walker, Sess. Cas.* 21.

Any two justices may direct their precept under their *teste* to the sheriff, for the summons of the sessions, 2 *Haw.* 41.; and such precept should bear date fifteen days before the return, and ought forthwith to be delivered to the sheriff, to the end he may have sufficient time to proclaim the sessions, to summon and return the juries, and to warn all officers and others that have business there to attend. *Nels. Introduct.* 35. *Burns Justice*, 97. *Ed.* 10.

Those who are bound to appear at the sessions, besides the justices of the peace, are—1. The Custos Rotulorum, or his sufficient deputy, who is the clerk of the peace, for the *Custos Rotulorum* has the custody of the rolls or records of the county. 2. The sheriff, either by himself or his deputy; it being his duty to return jurors, receive fines, and execute process. 3. All coroners, whose duty is to summon jurors, and execute process upon the default

or neglect of the sheriff, or in case of his absence, or having an interest in the matter before the court. 4. The constables of the several townships within the district, and all other officers to whom any warrant has been directed, in order to make a return thereof. 5. The keeper of the gaol, who is bound to bring up the prisoners, and to receive such as may be committed. 6. All persons returned as jurors by the sheriff, by virtue of the above mentioned precept. 7. All persons bound by recognizance to appear, to answer, or to prosecute and give evidence. *Dalt. c.* 185. *Burn* 98. 99. *Ed.* 10.

By 22 *G.* 2. *c.* 46. § 12. No person shall act as *solicitor*, *attorney* or *agent*, at the sessions, unless he is admitted and enrolled according to law, under the penalty of £50. And by § 14. *Clerks of the peace*, *under-sheriffs* and their respective *deputies*, are prohibited under the like penalty, from practising at the sessions.

Of the Jurisdiction of the Sessions.

1. The jurisdiction of the sessions, by the 34 *Edw.* 3. *c.* 1. extended to the trying and determining all *felonies* and *trespasses* whatsoever. But now they ought not to try any greater offence than that of *simple larceny*, their commission providing, that if any case of difficulty arises, they shall not proceed to judgment, but in the presence of one of the justices of the court of King's bench, or one of the judges of assize. Consequently, *murders*, *burglaries*, and other capital *felonies*, are reserved for a more solemn investigation at the assizes. The sessions have no commission of *gaol delivery*; neither have they any jurisdiction over *forgery* or *perjury* at common law; *R. v Gibbs*, 1 *East* 473. *R. v. Yarrington*, 1 *Salk.* 406. *R. v. Bainton*, 2 *Str.* 1088. 2 *Haw. c.* 8. § 38. Nor over any *new created* offence, as usury; unless express jurisdiction is given to them by the statute creating the offence. *R. v. Smith*, 2 *Ld. R.* 1144. 1 *Bl. Rep.* 369. 2 *Salk.* 680. The general words in the commission of the peace, including *all trespasses*, this comprehends not only direct breaches of the peace, but also all such offences as have a tendency thereto; and on this ground, *conspiracies* and *libels*, or any *illegal solicitations*, *attempts* or *endeavours* to commit crimes, have been holden to be cognizable by the sessions. *R. v. Higgins*, 2 *East R.* 23. *R. v. Summers*, 3 *Salk.* 194. *R. v. Rispal*, 3 *Burr.* 1320. 1 *Bl.* 369. The sessions have, like every other court, the power to fine for a contempt committed in the face of the court. *R. v. Davison*, 4 *B. & A.* 334. But they cannot award an attachment for a contempt in disobeying any of their orders, the ordinary and proper method

being by *indictment*. *R. v. Bartlett*, 2 *Sess. Cas.* 176. *R. v. Robinson*, 2 *Burr.* 800. *R. v. Kingdon*, 8. *East* 41. 4 *Burns J.* 214. The sessions have also power to fine jurors for non-attendance at the court, upon proof of their having been duly summoned: also to commit to gaol any person guilty of contemptuous or disrespectful conduct in the presence of the court. But the sessions have no power to amerce any justice for his non-attendance at the sessions, as the judges of assize may for the absence of any such justice at the gaol delivery. 2 *Haw.* 41. 42. Nor are justices punishable for what they do in sessions. *Stam.* 173. Unless there be some manifest act of oppression, or wilful abuse of power. 2 *Barnardist*, 249. 250.

Justices in quarter sessions may also make rules and regulations for the gaols, which, when approved of by a judge of the court of king's bench, shall be in force, 32 *G.* 3. *c.* 8. § 16.; and fix the salary of the gaoler, which shall be in lieu of all fees; *Ib.* § 17.; appoint the high-constable and other constables, in the April sessions, 33 *G.* 3. *c.* 3. § 10.; regulate pound keepers fees, 34 *G.* 3. *c.* 8. § 3.; and their charges for feeding animals impounded, 43 *G.* 3. *c.* 10. § 1.; grant certificates authorising the clergy of different congregations to solemnize matrimony, 1 *W.* 4. *c.* 1.; nominate parish and town officers, in cases where no town meeting is held, and also where any officers appointed at the town meeting shall die or remove from the township, and may fine persons for neglecting or refusing to act, after notice of their appointment, 46 *G.* 3. *c.* 5.; may appoint surveyors of the highways in the April sessions; confirm the report of any alteration in, or new road to be made, and direct the employment of a surveyor of lands, if needful, and order him a remuneration not exceeding 10s. per diem, from the district funds, and order the treasurer to pay surveyors of highways 7s. 6d. per diem, for services, 50 *G.* 3. *c.* 1., except in cases where a road applied for is not confirmed by the sessions, 52 *G.* 3. *c.* 10.; and under particular circumstances may direct the payment of monies from the district funds, towards any public work on the highways, when deemed expedient, not exceeding £50, at any one time, 50 *G.* 3. *c.* 1 § 20.; may proceed to out-lawry, 55 *G.* 3. *c.* 2.; 3 *W.* 4. *c.* 2. In case of invasion, may hold the sessions at the most convenient place, 55 *G.* 3. *c.* 9.; may grant certificates in case of the death of witnesses to deeds, &c. of the due execution thereof, in order to their registry, 58 *G.* 3. *c.* 8. § 3.; cannot take cognizance of illegal marriages, 2 *G.* 4. *c.* 11.; may appoint inspector of weights and measures, 4 *G.* 4. *c.* 16.; may assign limits to the several gaols of the province, 11 *G.* 4. *c.* 3.; may adjourn to the 5th January, and on that day grant tavern licences, 4. *G.* 4.

c. 19.—11. *G.* 4. *c.* 9. The character of the applicant to be enquired into, and if satisfactory to the justices, the chairman may grant certificates under his hand and seal, which shall enable the parties holding them, to take out license, on payment to the inspector of the amount of duties imposed by law on the same, 59 *G.* 3. *c.* 2. § 2.—11 *G.* 4. *c.* 9. § 3.; and may grant certificates for tavern licenses at any other general quarter sessions in the year, 59 *G.* 3. *c.* 2. § 5.; and make and frame rules and regulations for the conduct of tavern-keepers, 59 *G.* 3. *c.* 2. § 6.; may appoint the district treasurer; 59. *G.* 3. *c.* 8. § 18.; who shall be removable at the pleasure of such justices, § 20.

By 47 *G.* 3. 2. 12. § 2. When any person shall be convicted of any assault or misdemeanor before the sessions, he shall pay the costs of prosecution and conviction to be allowed and taxed by the court; and when the defendant shall be acquitted, the prosecutor, unless it shall appear there were reasonable grounds of prosecution, to be certified by the chairman, shall pay the defendant's taxed costs. The defendant's costs upon a presentment, if the defendant be acquitted, shall be paid out of the district treasury.

The proceedings at a General Quarter Sessions.

The court having assembled, the session is then usually proclaimed by a bailiff, in the following terms:

"O yez! o yez! o yez! the King's justices do strictly charge "and command all manner of persons to keep silence, while the "King's commission of the peace for this district is openly read, "upon pain of imprisonment."

The commission is then read by the clerk of the peace; then the heir and devisee act, as required by the 45 *G.* 3. *c.* 2. § 14.

The clerk of the peace then calls upon the sheriff, thus: "sheriff of the district, return the precept to you delivered," which the sheriff does accordingly.

Then the grand jury are called in order, every one by his name. The foreman, by himself, lays his hand on the book, and the clerk of the peace administers to him the following oath:

"Sir,—You, as foreman of this grand inquest, for the body of "this district, shall diligently inquire and true presentment make, "of all such matters and things as shall be given you in charge. "The King's counsel, your fellows, and your own, you shall keep "secret: you shall present no one for envy, hatred or malice; "neither shall you leave any one unrepresented for fear, favour "or affection, or hope of reward; but you shall present all things "truly, as they come to your knowledge, according to the best of "your understanding.—So help you God."

The rest of the grand jury, by "three" at a time, in order, are sworn in the following manner:

"The same oath which your foreman hath taken on his part, "you and every of you shall well and truly observe and keep on "your part.—So help you God."

The clerk of the peace then calls over their names thus: "Gen- "tlemen of the grand jury, answer to your names and say sworn, "if you are sworn."

The chairman then delivers his charge to the grand jury.

The bailiff is then sworn to attend the grand jury, thus:

"You shall swear that you will diligently attend the grand in- "quest during the present sessions, and carefully deliver to them "all such bills of indictment or other things, as shall be sent to "them by the court, without alteration.—So help you God."

By the 4 *G.* 4. *c.* 7. The claims of persons claiming under the "heir and devisee act," shall be proclaimed by the crier, at the sessions next after the notice given.

The prosecutors and bail are then called in the following manner (if need be) by the crier:

"A. B. come forth and prosecute and give evidence against "C. D. or you will forfeit your recognizance."

Calling persons out upon Bail.

"A. B. of the township of ——, come forth, save you and your "bail, or you will forfeit your recognizance."

Calling Bail to bring forth Principals.

"C. D. and E. F. *(with their additions)* bring forth the body "of A. B. whom you have undertaken to appear here this day, "or you will forfeit your recognizance."

Oath of Witness on Indictment before the Grand Jury.

"The evidence you shall give to the grand inquest upon this "bill of indictment against A. B. for larceny, shall be the truth, "the whole truth, and nothing but the truth. So help you God."

If the witness be a Quaker his evidence is admissible under the 10 *G.* 4. *c.* 1., upon making the following affirmation, in lieu of any oath: "I, A. B. do solemnly, sincerely, and truly declare, "that I am one of the society called Quakers, [Menonists, Tun- "kers, or *Unitas Fratrum*, or Moravians," *as the case may be.*]

Upon the return of the grand jury into court with any bills of indictment, the clerk of the peace calls them severally by their names, and says—"Gentlemen, have you agreed upon any bills."

Upon the foreman presenting the same, the clerk of the peace addresses the grand jury as follows:

"You are content the court shall amend matter of form, alter-"ing no matter of substance without your privity, in those bills "you have found."

The grand jury signify their assent, and return to their business again, viz: to examine other bills.

Then the court proceeds to arraign such prisoners as are indicted, in the manner following:

The clerk of the peace says—"A. B. hold up your hand—you stand indicted by the name of A. B. late of ——, for that you," so reads the indictment through, and then asks the prisoner "are "you guilty or not guilty." If he says "not guilty," then the clerk of the peace inquires if he be ready for his trial.

The clerk of the peace then proceeds to call the petit jury thus:

"You good men that are impannelled to try the issue joined "between our sovereign lord the King, and the prisoners at the "bar, answer to your names, upon pain and peril that shall fall "thereon."

When the jurors have appeared, then the clerk of the peace calls to the bar, the prisoners that are to be tried by the jury, and says thus:

"These good men that you shall now hear called, are those "that are to pass between our sovereign lord the King and you; "if, therefore, you [or any of you] will challenge them, or any "of them, you must challenge them as they come to the book to "be sworn, before they are sworn, and you shall be heard."

Then the clerk of the peace calls the jury to be sworn, in cases of felony, one by one, thus:

"You shall well and truly try, and true deliverance make be-"tween our sovereign lord the King and the prisoner at the bar, "whom you shall have in charge, and a true verdict give accord-"ing to the evidence. So help you God."

But, in cases of misdemeanor, the jury may be sworn "three" at one time, thus:

"You shall well and truly try the issue joined between our so-"vereign lord the King and the defendant, and a true verdict give, "according to the evidence. So help you God."

The clerk of the peace then calls over the jury, and says,—"Gentlemen, answer to your names and say 'sworn,' if you are "sworn."

The prisoner being at the bar, the clerk of the peace then proceeds to read the indictment, thus:

"A. B. stands indicted by the name of A. B." &c. reading the whole of the indictment as he did upon the arraignment, and then

says, "upon this indictment the defendant [or the prisoner at the "bar, as the case may be] hath been arraigned, and upon his ar- "raignment hath pleaded not guilty: your duty therefore, is to "inquire whether he be guilty or not guilty, and to hearken to "the evidence."—And then the court proceeds to examine the witnesses upon oath, as well for the King as for the prisoner.

Oath of Witnesses.

"The evidence you shall give to the court and the jury sworn, "between our sovereign lord the King, and the defendant [or the "prisoner at the bar, as the case may be] shall be the truth, the "whole truth, and nothing but the truth.—So help you God."

Upon the evidence being closed, in cases of larceny, the prisoner is asked by the chairman, if he has any thing to say in his defence, or any witnesses to call; but in cases of larceny or felony, the prisoner's counsel is never allowed to address the jury in the prisoner's behalf. The prisoner himself, however, may address the jury. But in cases of *misdemeanor*, such as assault and battery, and the like, the defendant's counsel may address the jury. Upon the case being closed, the chairman sums up the evidence to the jury, commenting upon it as he proceeds, shewing the consistency or inconsistency of any part of it, and the bearing it has upon the "guilt" or "innocence" of the prisoner. The chairman then desires the jury to retire and consider their verdict. Upon the jury retiring to consider their verdict, the following oath is administered to the bailiff:

"You shall swear you will keep every person of this jury toge- "ther in some private and convenient place, without meat, drink, lodging or fire (candle excepted)—you shall not suffer any person to speak to them or any of them, neither shall you speak to them yourself, unless it be to ask them, whether they are agreed upon their verdict, without leave of the court.—So help you God.

When the jury return, their names are called over by the clerk of the peace, who says, "gentlemen, are you agreed on your ver- "dict; how say you, is the defendant [or prisoner, as the case "may be] guilty or not guilty?"

The verdict is then endorsed by the clerk of the peace, on the indictment, and signed by the chairman, which being done, the former addressing the jury, says, "gentlemen, hearken to the ver- "dict as the court records it—you find the defendant [or prisoner] "guilty [or not guilty]" according to the verdict.

Should the defendant, however, upon being arraigned, be permitted to traverse to the next sessions, he may be admitted to bail, as follows:

"A. B. [principal] you acknowledge to owe to our sovereign "lord the the King, the sum of [£——, whatever sum the court "may approve] and you, C. D. and E. F. [sureties] severally ac- "knowledge to owe to our said lord the King, the respective sums "of [£——] and [£——] to be respectively levied of your goods "and chattels, lands and tenements, to his Majesty's use, by way "of recognizance, upon condition, that you (A. B.) shall appear "at the next general quarter sessions of the peace, to be holden "for this district, to try your traverse upon this indictment, to "which you have now pleaded not guilty, and not depart the court "without leave of the court.—How say you, A. B., C. D., and E. "F., are you content?"

If a juror be taken ill during a trial, another juror may (with the consent of the prisoner) be sworn and added to the other eleven, and the evidence re-delivered to the jury. *Joyce's case, Cor. Lord Keeper, Leach*, 621. *n.* But even without the consent of the prisoner, the court may, under such circumstances, discharge the jury and charge a fresh jury, with the prisoner. But the prisoner must be again allowed his challenge to each of the eleven former jurymen. *R. v. Edwards*, 4 *Taunt.* 309.

Trial of a Traverse.

The proceedings upon a traverse, are the same as in an original trial, except that the defendant is not arraigned nor called upon to plead, this having been already done at the former sessions.

The jury are to be sworn and indictment read as before directed.

Oath of Jury on a Traverse.

"You shall well and truly try the issue of this traverse between "our sovereign lord the King, and the defendant, and a true ver- "dict give, according to the evidence. So help you God."

Oath of Witnesses on a Traverse.

"The evidence you shall give to the court and jury sworn, "touching the issue of this traverse, shall be the truth, the whole "truth, and nothing but the truth: so help you God."

Oath of Jury on Road Matters.

"You shall well and truly try, and a true verdict give in the "matter of a new highway or road, in the township of ——, re- "ported by Mr. ——, one of the surveyors of highways for the "township of ——. So help you God."

Oath of Witnesses on Road Matters.

"The evidence you shall give to the court and jury sworn, "touching the matter, &c. (same as above) shall be the truth, the "whole truth, and nothing but the truth. So help you God."

In discharging the defendants recognizance for default of the prosecutor appearing, (which ought not to be done till the close of the session,) proclamation is made thus:—"Oyez! Oyez! Oyez! "If any can say ought, why (defendant, naming him) should any "longer be bound, let them come forth and they shall be heard; "otherwise the court does discharge him, paying his fees."

The court cannot commit for nonpayment of fees; for if there is right there is a remedy; and *indebitatus assumpsit*, will lie if the fee is certain, if uncertain, quantum-meruit. *L. Ray*, 703.

When there are no more bills to be laid before the grand jury, and they have finished all other business before them, it is usual for the court to inform them that there is no other business to come before them, and that they are therefore discharged.

The court having disposed of the business, then adjourn. The clerk of the peace, during the sitting of the court, enters a minute of all the proceedings, commencing with the day of the sessions, and before whom the same is held inserting the names of the grand jurors and petit jurors, and every other minute particular attending the proceedings throughout.

Precept to Summon the Sessions. (Burn.)

Home District, } J. P. and K. P., Esquires, Justices of our
to wit. } sovereign lord the King, assigned to keep the peace in the home district aforesaid, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the said district; to the sheriff of the Home district, greeting:—On the part of our sovereign lord the King, we command you, that you omit not by reason of any liberty within your district, but that you cause to come before us and other our fellow justices, assigned to keep the peace in the said district, and also, to hear and determine divers felonies, trespasses and other misdemeanors, in the said district committed, on ——— the ——— day of ———, now next ensuing, at the hour of ten, in the forenoon of the same day, at ——— in the said district, twenty-four good and lawful men, of the body of your district, then and there to inquire, present, do and perform, all and singular, such things, which on the behalf of our said sovereign lord the King, shall be enjoined them; also, that you make known to all coroners, keepers of gaols and houses of correction, high constables and bailiffs, of

liberties within the district aforesaid, that they be then and there, to do and fulfil such things, which by reason of their offices, shall be to be done: moreover, that you cause to be proclaimed through the said district, in proper places, the aforesaid sessions of the peace, to be holden at the day and place aforesaid; and do you be then there, to do and execute those things which belong to your office; and have you then there, as well the names of the jurors, coroners, keepers of gaols and of houses of correction, high constables and high bailiffs aforesaid, as also this precept. Given under our hands and seals, at ——— in the district aforesaid, the ——— day of ——— in the ——— year of the reign of ———, &c.

The Stile of the Sessions. (Burn.)

Home District. } The general quarter sessions of the peace, holden at ——, in and for the said district, on the —— day of ——, in the —— year of the reign of our sovereign lord William the Fourth, of Great Britain, France and Ireland, King defender of the faith and soforth, before J. P. and K. P. Esquires, and others, justices of our said sovereign lord the King, assigned to keep the peace in the said district, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said district committed, and soforth.

Subpœna to give Evidence.

William the Fourth, by the grace of God of the United Kingdom of Great Britain and Ireland, King defender of the faith; to A. B., C. D. &c. greeting: We command you and every of you, that all business being laid aside, and all excuses ceasing, you do in your proper persons appear before our justices assigned to keep our peace in the —— district, and also to hear and determine divers felonies, trespasses, and other misdemeanors in our said district committed, at the general quarter sessions of the peace, to be holden at ——, in and for the said district, on —— the —— day of —— now next ensuing, at the hour of —— o'clock in the forenoon of the same day, to testify the truth and give evidence before the grand inquest as well as the court, touching a bill of indictment to be preferred against A. O. in a case of larceny, [trespass and assault, or any other cognizable offence,] and this you, and every of you, are in no wise to omit, under the penalty of —— pounds for you and every of you. Witness, J. P. Esquire, the —— day of ——.

A Subpœna Ticket for a Witness.

Mr. A. W.—By virtue of a writ of subpœna to you and others directed and herewith shewn unto you, you are required personally to be and appear at the next general quarter sessions of the peace, to be holden at ——, in and for the —— district, to testify the truth, and give evidence before the grand inquest as well as the court, touching a bill of indictment to be preferred against A. O. in a case of larceny, [*trespass and assault, &c. as the case may be,*] and herein you are not to fail upon pain of —— pounds. Dated the —— day of ——, in the year of our Lord ——.

SHERIFF.

THE Sheriff is an officer of very great antiquity, his name being derived from the Saxon word *scirgerefa*, signifying the reeve bailiff, or officer of the shire. He is called in latin, *vice-comes*, as being the deputy of the *earl* or *comes*, to whom the custody of the shires in England is said to have been committed at the first division of the kingdom into counties: but, though the sheriff be still called *vice-comes*, yet he is entirely independent of the earl; the king, by his letters patent, committing *custodiam comitatus* to the sheriff, and to him alone. 1 *Bl. Com.* 339. 5 *Burn.* 230.

In this province, the sheriff is appointed by letters patent under the great seal, and holds his office during pleasure.

As a *conservator of the peace*, he may apprehend and commit to prison all persons who break the peace, or attempt to break it, and may bind any one in a recognisance to keep the peace: he is bound, *ex-officio*, to pursue and take all traitors, murderers, felons and other misdoers, and commit them to gaol for safe custody: he is also bound to defend his county against any of the King's enemies, when they come into the land; and for this purpose, as well as for keeping the peace and pursuing felons, he may command all the people of his county to attend him, which is called the *posse comitatus*, or power of the county; and this summons, every person above the age of fifteen years and under the degree of a *peer*, is bound to attend, upon warning, under pain of fine and imprisonment.

In his ministerial capacity, the sheriff is bound to execute all process issuing from the King's courts of justice. In the commencement of civil causes he is to serve the writ, to arrest, and to take bail: when the cause comes on to trial, he must summon and return the jury: when it is determined, he must see the judgment of the court carried into execution. In criminal matters he also arrests and imprisons; he returns the jury; he has the custody of the delinquent, and he is bound to execute the sentence of the

court, though it extend to death itself; and it is no excuse to the sheriff to return, that he could not execute any process because of resistance, for he may take with him, in every case of need, the power of the county, to enforce obedience to the king's writs or other process of the law. 13 *Ed.* 1. *Stat.* 1. *c.* 39. He is also compelled to execute the warrant of a justice of the peace, if upon any extraordinary occasion it should be directed to him, though magistrates warrants are, in practice, usually directed to constables and other inferior officers; but he need not go in person to execute it, but may authorise another to do so. 2 *Haw. c.* 13. § 29. He is also bound to attend the sessions of the peace, there to return his precepts; to take charge of the prisoners; to receive fines for the king, and the like. 2 *Haw. c.* 8. § 45. And for any default in executing the writs or precepts of the sessions, he is punishable by the justices in sessions, as for a contempt. *Id. c.* 22. § 2.

The sheriff has also the keeping of the gaols, and is answerable for all escapes suffered by the gaolers, to the king, if it be a criminal matter; or in a civil cause, to the party injured: and by provincial statute, the 32 *G.* 3. *c.* 8. he has the appointment and removal of the gaoler.

As the *King's bailiff*, it is the business of the sheriff to preserve the rights of the king within his bailiwick. *Fortescue, c.* 24. He must seize to the king's use, all lands devolved to the crown by *attainder* or *escheat*. 1 *Bl. Com.* 344.

By 3 *G.* 1. *c.* 15. § 17. A sheriff guilty of extortion forfeits, to the party grieved, treble damages, and double the sum extorted, and also £200. And by provincial statute, 2 *G.* 4. *c.* 9. a sheriff lying in gaol for debt three months forfeits his office.

When a new sheriff is appointed and sworn, his predecessor (or in case of his decease, his under sheriff,) sets over by indenture, all the prisoners in the gaol severally by their names, together with all the writs, wherein must be comprehended all the actions which the old sheriff hath against every prisoner; and till the delivery of the prisoners to the new sheriff they remain in custody of the old sheriff. *Wood's Inst.* 6. 1. *c.* 7.

By the 3 *W.* 4. *c.* 9. entitled "an act to make certain regulations relating to the office of sheriff in this province, and to require the several sheriffs of this province to give security for the due fulfilment of the duties of their office,"—it is enacted by § 1. that the sheriff of each district shall enter into a bond to his Majesty, in the penal sum of £1,000, together with two sureties to be approved by the inspector general of public accounts, in £500 each, for the payment of all monies due to the crown; which bond shall be in the form given in schedule A. or in words to the like effect.

§ 2. The sheriff of every district shall also provide two or four sufficient sureties who, with himself, shall enter into a covenant under seal, joint and several, according to the form in schedule B. or in words to the same effect; which covenant shall be available to, and may be sued upon by any person suffering damages by the default of any such sheriff. § 3. Such sureties shall be approved of by the justices in session, and a certificate thereof given by the chairman. § 4. The bond to his Majesty shall be deposited with the inspector general, and the covenant shall be made in duplicate, one of which shall be deposited with the secretary of the province, and the other filed with the clerk of the peace. § 5. Any person may examine such covenant, and have a copy on payment of 1s. 3d. for the examination, and 5s. for the copy, to the clerk of the peace. § 6. That such bond and covenant shall be renewed every four years, either with the same or other sufficient sureties, to be certified as aforesaid. § 7. Whenever the office of sheriff shall become vacant, his successor shall not be appointed until he has first filed the requisite covenant and bond, with sureties. § 8. And no person shall be appointed sheriff who shall not be possessed of real estate in this province, of the actual value of £750 above incumbrances; and shall, before he receives his commission, file an affidavit of the fact, in the office of the secretary, to be sworn before the chairman of the quarter sessions. § 9. In case of death, absence from the province, or insolvency of any surety, new securities shall be given. § 10. The sureties apprehensive of the insolvency of their principal, may notify the same to the lieutenant governor by affidavit to this effect, sworn before a commissioner of the K. B. and thereupon the sheriff shall be notified by the secretary, to furnish new security, or on affidavit deny that he is so insolvent, or worth less than £750 over and above all incumbrances; and if such requisition be not complied with, within one month after the sitting of the then ensuing quarter sessions of the district, he shall be removed from office. § 11. When any new sureties shall be given, the former sureties shall not be discharged from any defaults previous thereto. § 12. Actions brought on the sheriff's covenant, shall not bar other actions on the same covenant for other causes. § 13. Any surety having paid the full amount for which he became liable, shall be thereby discharged; and the sheriff shall, within four months, give new securities. § 14. If the damages recovered and paid by any surety is not equal to the amount for which he is bound, judgment may be obtained against him for any residue. § 15. Upon proof by affidavit or otherwise, to the general quarter sessions, that any security has been discharged, or is insolvent, it shall be lawful for the sessions to notify the sheriff thereof, and such sheriff shall re-

new the covenant within four months after such notice. § 16. Executions against the sheriff and his sureties shall be first levied upon the sheriff. § 17. The sheriff shall be liable to pay the costs of all rules upon him, unless the court shall order otherwise; but in vexatious applications, the court may award costs to the sheriff. § 18. The sheriff shall not be entitled to any fees on any writ, placed in his hands fifteen days before the return day, if he does not return the same to the attorney within four days after such return, or endorse the same by post, within that time, to such attorney. § 19. Any sheriff neglecting to give the required security shall be removed from office. § 20. The covenants to be entered into by the sheriffs of the several districts, shall specify the following sums as the extent thereof, viz.:—sheriffs of the Home district—district of Niagara—district of Gore—district of London—district of Newcastle—Midland district—district of Johnstown—Eastern district, in the sum of £1000. each, and two sureties in £500. each, or four sureties in £250. each; and the sheriffs of the Western district—district of Bathurst—district of Ottawa, in the sum of £500. each, and two sureties in £250. each, or four sureties in £125. each; and that the sheriff of any new district hereafter to be formed, shall give security, himself in £1000, and two sureties in £500. each, or four sureties in £250. each. § 21. The sureties entering into any such covenant shall be held liable for any omission or default of the sheriff, in not paying over monies received by him, and for damages sustained by the parties to any legal proceeding, in consequence of wilfull or negligent misconduct in office, and that the sheriff shall be joined in any action against the sureties. § 22. Notwithstanding any forfeiture of office, the sheriff shall be continued in office until the appointment of his successor, subject to his prior liabilities. § 23. Upon the death of any sheriff the deputy sheriff shall continue to execute the office in his name, until the appointment of a successor, and such deputy sheriff shall be held responsible, as the sheriff deceased would have been, and the deceased sheriff's sureties shall also stand as a security for such under sheriff.

SCHEDULE A.—*Form of Bond to the King.*

Know all men by these presents, that we, A. B. sheriff of the district of ——, C. D. of ——, in the district of ——, Esquire, and E. F. of ——, in the district of ——, are held and firmly bound to our sovereign lord the King, his heirs and successors, in the several sums following, that is to say:—the said A. B. in the sum of one thousand pounds; the said C. D. in the sum of five hundred pounds; and the said E. F. in the sum of five hundred pounds: to be paid to our sovereign lord the King, his heirs and

successors, for which payments to be well and truly made, we bind ourselves severally and respectively, and each of us, his heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this —— day of ——, in the year of our Lord ——.

The condition of this obligation is such, that if the above bounden A. B. his executors or administrators, shall well and faithfully account for, and pay over to his Majesty's receiver-general of this province, or to such person as may be authorised to receive the same, all such sum and sums of money as he shall receive as such sheriff as aforesaid, for our said lord the King, his heirs or successors, from the date of this obligation until the —— day of ——, in the year of our Lord —— (four years,) then this obligation to be void, otherwise to remain in full force and virtue.

[L. S.]
[L. S.]
[L. S.]

Signed and delivered in presence of ——.

SCHEDULE B.—*Form of Covenant.*

Know all men by these presents, that we, A. B. sheriff of the district of ——, C. D. of ——, in the district of ——, and E. F. of ——, in the district of ——, (when four sureties are given, the names of the other two to be inserted in like manner) do hereby jointly and severally, for ourselves, and for each of our heirs, executors and administrators, covenant and promise, that A. B. as sheriff of the said district, shall well and duly pay over to the person or persons entitled to the same, all such monies as he shall receive by virtue of his said office of sheriff, from the date of this covenant to the expiration of four years thence next ensuing, and that neither he nor his deputy shall, within that period, wilfully misconduct himself in his said office, to the damage of any person being a party in any legal proceeding: nevertheless, it is hereby declared, that no greater sum shall be recovered under this covenant, against the several parties thereto, than as follows, that is to say:

Against the said A. B. in the whole ——.
Against the said C. D. ——.
Against the said E. F. ——.
(If other sureties, add them in like manner.)

In witness whereof, we have to these presents set our hands and seals, this —— day of ——, in the year of our Lord ——.

[L. S.] [L. S.]
[L. S.] [L. S.]

Signed, sealed and delivered, in the presence of ——.

SHIPS.

By statute 1 *An. c.* 9. If any ship officer shall wilfully burn the ship to which he belongeth, or procure the same to be done, to the prejudice of the owner of the ship or goods, he shall be guilty of felony, without benefit of clergy.

SHOP-KEEPERS.

By statute 37 *G.* 3. *c.* 11. Every shop-keeper, or other person selling any wine, brandy, rum, or other spirituous liquors, in less quantity than 3 gallons at any one time, shall take out a license, (from the inspector of the district, by the 43 *G.* 3. *c.* 9.) upon payment of the like rates, duties and fees, as were then paid by any person licensed to keep a house of public entertainment; and any person selling any wine, rum, brandy, or other spirituous liquor, in less than three gallons, without such license, shall incur the penalty of £20, one moiety thereof to be paid to the informer, and the other to the receiver general, for the use of the province, to be recovered in the manner and form set forth in the 34 *G.* 3. *c.* 12.

By the 40 *G.* 3. *c.* 4. § 3. No licensed shop-keeper shall sell less than one quart, under the penalty of £20, to be recovered before three justices, and levied, with costs of suit, by distress and sale—one half of the penalty to the informer, and the other to the use of the province; and in default, the offender shall be committed for a time not exceeding three calendar months. § 4. Prosecution to be commenced within six months.

By 2 *W.* 4. *c.* 20. After reciting that the 54 *G.* 3, entitled, "an act to grant an additional duty on shop and tavern licenses," had expired, and that it was expedient to continue the same, and to require persons selling wines or spirituous liquors on board of steam-boats to pay an additional duty—it is enacted that, in addition to the sum of £1 16s. sterling, and 20s. currency, required by law for a shop-keeper's license, there shall be paid the further sum of £2 currency. Sec. 2. And every person selling wine, brandy, or spirituous liquors, on board of any steam vessel, shall be entitled to a license, without entering into bonds or recognizance to keep an inn, upon payment of £2, in addition to £1 16s. sterling, and 20s. currency, now required to be paid by law. Sec. 3. Any person selling wines or spirituous liquors on board of any steam-boat without having obtained such license, shall be subject to all the penalties imposed by law for selling without a license. Sec. 6. Act to be in force four years, and to the end of the next session.

By the 4 *W.* 4. *c.* 50. the above act of the 2 *W.* 4. *c.* 20. is continued and made permanent.

By the 4 *W.* 4. *c.* 18. Entitled, "an act to prevent the consumption of spirituous liquors in shops," it is enacted by § 1. that no licensed shop-keeper shall allow any wine, brandy, rum, or other spirituous liquors sold by him, to be consumed within his shop, or within the building of which such shop is part. By § 2. Under the penalty of £5, to be recovered before three justices of the peace, upon the oath of one witness, (not the informer) with costs, and to be applied in the same manner as the penalty for selling by retail without license. Sec. 3. And any purchaser consuming the same in such shop or building, shall be liable to the same penalty, recoverable in the same manner. Sec. 4, Exempts such persons as to the justices shall appear not to have been *intentionally* guilty of the offence. Sec. 5. Prosecution to be within six calendar months. Sec. 6. This act to continue in force four years, and to the end of the next session.

Information for selling less than one quart.—Penalty £20.
See 40 *G.* 3. *c.* 4.

Home District, } Be it remembered, that on the —— day of
to wit. } ——, in the year of our Lord, —— at —— in the said district, C. D. of ——, in the district aforesaid, labourer, who as well for our sovereign lord the King as for himself, doth prosecute in this behalf, personally cometh before us, three of his Majesty's justices of the peace for the said district, and informeth us, that A. B. late of —— in the said district, merchant, being a shop-keeper duly licensed to sell wine, brandy, rum and other spirituous liquors by retail, within the space of 6 calendar months, now last past, to wit: on the —— day of ——, in the year aforesaid, at the township aforesaid, in the district aforesaid, did sell and vend unto one E. F. a certain quantity of [wine, brandy or rum, &c.] in less quantity than one quart, to wit: one pint of [wine, &c.] contrary to the form of the statute, &c. *(concluding as in the form given in p.* 239.) See also title "Summons."

Conviction

In the general form, given by the 2 *W.* 4. *c.* 4.

N. B.—The information should not be upon oath.

Information against a Shop-keeper for allowing Spirituous Liquors to be consumed within his premises.—Penalty, £5.—4 *W.* 4. *c.* 18.

Commencement as before] that A. B. late of —— in the said district, being a shop-keeper, duly licensed to sell wine, brandy,

rum and other spirituous liquors, within the space of 6 months, now last past, to wit: on the —— day of ——, in the year aforesaid, knowingly, willingly and intentionally, did allow a certain quantity, to wit: one pint of [*wine, brandy, &c.*] parcel of one quart of [wine, brandy, &c.] which he the said A. B. had then immediately before, to wit: on the day and year last aforesaid, at the township aforesaid, in the district aforesaid, sold and delivered to one G. H. to be drunk and consumed within the shop of him, the said A. B. situate at the township aforesaid, in the district aforesaid, by him the said G. H. the purchaser thereof, contrary to the statute, &c. [*conclude as in the last form.*]

Information against a Purchaser, under the same statute.—Penalty, £5.

Commencement as before] that G. H. late of —— in the said district, having on the —— day of —— in the year aforesaid, purchased of and from one A. B. late of the same place, being a shop-keeper, duly licensed to sell wine, brandy, rum and other spirituous liquor, a certain quantity, to wit: one quart of wine, afterwards and within the space of 6 calendar months, now last past, to wit: on the day and year last aforesaid, at the township aforesaid, in the district aforesaid, did consume one pint of wine, parcel of the said wine, so purchased by him as aforesaid, in the shop of him, the said A. B. there situate without the permission of him, the said A. B. contrary to the form of the statute, &c. *(as before.)*

SOLDIERS.

By *stat.* 2. & 3. *Anne*, entitled, "an act for punishing mutiny, "desertion and false musters, and for better payment of the army, "and their quarters, &c." it is enacted, that if any officer or soldier, in her Majesty's army, shall either upon land, out of England, or upon sea, hold correspondence with any rebel, or enemy of her Majesty, or give them advice or intelligence, either by letters, messages, signs or tokens, or any manner of way whatsoever, or shall treat with such rebels, or enemies, or enter into any condition with them, without her Majesty's licence, or licence of the general, lieutenant-general, or chief commander, then every such person, so offending, shall be deemed and adjudged to be guilty of high treason, and suffer such pains and penalties as in case of high treason.

By the 44 *G.* 3. *c.* 2. It is enacted, that if any person (excepting soldiers) shall, by words or with money, or by any other means, directly or indirectly, prevail upon, or attempt to prevail

upon, procure, persuade or encourage, any soldier to desert, or leave his Majesty's service, he shall, upon conviction, be committed to the common gaol of the district, where such offender shall be sued, without bail or main-prize, for 6 calendar months; and if the court shall think proper, pay a sum not exceeding £40, and if not paid on or before the third day previous to the expiration of such imprisonment, such offender shall be publicly whipped. § 2. Any person harboring deserters, shall forfeit £20, and in default, be committed for three calendar months, unless such fine shall be sooner paid. § 3. Prosecution to be commenced within 6 calendar months, unless the offender shall be absent from the province, then within 6 months after his return, and the issuing of a warrant shall be deemed the commencement of a prosecution. § 4. Any one justice, on due proof upon oath, may issue his warrant to apprehend such offenders, and commit him for trial, unless he shall procure two good and sufficient sureties to the satisfaction of the said justice, in manner hereinafter specified, viz: if the said offender shall be charged with any offence under the first section of this act, then such offender shall be bound in £200, and each of the sureties in £100; and for any offence under the second section, then in the sum of £40, and each of the sureties in £20, for the appearance of such offender at the next assizes, or session of oyer and terminer and general gaol delivery. § 6. All fines recovered under this act, shall be applied to the use of the province.

By the 3 *W.* 4. *c.* 4. Entitled, "an act to reduce the number of cases in which capital punishment may be inflicted, &c.," it is enacted by § 14. That nothing in this act shall affect any of the provisions of the 2 & 3 *Anne.*

STILLS.

By the 34 *G.* 3. *c.* 11. Entitled, "an act to lay and collect a duty upon stills," a duty of 1*s.* 3*d.* per gallon is laid upon stills. § 3. No still shall be used until the owner thereof, shall be duly licensed, and any person desirous of obtaining a license, shall, in a written requisition, specify and set forth the number of gallons which the body of such still contains; and in case any person shall use any still without having obtained such license, or shall use any of larger dimensions than that specified in his license, or shall have in his possession any still erected or set up over a furnace or fire-place, so as the same may be used for distilling, capable of containing singly or together, a greater number of gallons in the body or bodies thereof, than specified in his license, and be thereof convicted, on the oath of one witness, before any justice, he shall forfeit for every offence, £10, to be levied by distress and

sale, one half of which penalty shall be paid to the informer, and the other to the receiver general, for the use of the province, and the still so employed shall be forfeited to his Majesty, and the offender shall be incapable of having another license for three years. § 4. Such licenses shall be issued by the secretary, *(repealed by* 43 *G.* 3. *c.* 11.) and the requisition may be in the following form:

"I, A. B. do require a license for using a still, the body of "which is capable of containing ——— gallons, and no more, "[and in case more than one still is intended to be used] and "also for another still, the body of which is capable of containing "——— gallons, and no more, for the year ensuing the fifth of "April next; as witness my hand, A. B. this ——— day of ———."

"To the secretary of the province of Upper Canada, or his "agent for the ——— district."

Sec. 5. Such requisition shall be filed by the secretary, or his agent, who shall grant a copy upon application, to any person, on payment of one shilling; which copy shall be signed by the secretary, and be held and taken as lawful evidence. § 6. Applications for such licenses shall be made on or before the 5th April, annually, *(altered by the* 45 *G.* 3. *c.* 1. *to the* 5th *of January,)* and the secretary shall give notice in the U. C. Gazette, at least one month before. Sec. 8.—2*s.* 6*d.* to be paid for such license, and no more. Sec. 9. No license shall be granted for any still containing less than 10 gallons, and any person working any such still shall forfeit £10, to be recovered on the oath of one witness before any justice; one half of the penalty to be paid to the informer, and the other to the receiver general, for the use of the province. Sec. 10. Any justice may, upon oath of the fact being made, grant a search warrant to a peace officer, taking with him the party making the oath, and any one other person to examine any still, said to contain a greater number of gallons in the body than specified in the license; but such warrant shall not be executed before sun-rise, nor after sun-set. Sec. 11. Distillers not to sell less than three gallons.

By the 43 *G.* 3. *c.* 9. So much of the 34 *G.* 3. *c.* 11. as authorises the secretary to distribute licenses, &c. is repealed. Sec. 2. Such license shall be issued by the inspector of the district.—Sec. 3. Under the same restrictions and penalties, and in the same manner and form as prescribed by said act of the 34 *G.* 3. *c.* 11. Sec. 4. And it shall be the duty of the inspector to ascertain by every means in his power, any person or persons having in his, her, or their possession any still or stills without being duly licensed, or using stills of a larger capacity than mentioned in the license, and to proceed against the parties for the penalties.

By the 44 *G.* 3 *c.* 7. Notice in writing must be given within

20 days after the decease of the party licensed, by the executor, &c. to the inspector for a license for the remainder of the term before he shall be entitled to indorsation of said license. Sec. 3. And thereupon the same may be indorsed by the inspector. Sec. 2. Notice in writing shall be given to the inspector upon the removal of any still. Sec. 4. Inspector authorised upon giving six hours notice, or when the still shall not be charged, to enter any still-house and measure the still as often as he shall see cause, and the owner refusing admittance, and being convicted upon the oath of the inspector, or otherwise, before any justice in the district, shall forfeit £25 to the use of the province, to be levied by distress and sale, and in default thereof, commitment to the common gaol, or to the custody of the sheriff without bail or main-prize, for three calendar months: subject to an appeal to the next quarter sessions, the defendant giving good security to the satisfaction of the convicting magistrate for payment of the penalty and costs, to prosecute such appeal; and the determination of the sessions shall be final.

By the 45 *G.* 3. *c.* 1. Licenses for stills to be granted and to commence in future on the 5th of January.

By the 59 *G.* 3. *c.* 17. Nothing contained in a certain act in the 58 *G.* 3. *c.* 1. imposing a duty on wines, &c. shall extend to prohibit any person from selling in the usual manner such liquors as they distil or raise upon their own farms, or to prohibit any person duly licensed to distil spirituous liquors, from selling such liquors without taking out the license required by this act.

By the 59 *G.* 3. *c.* 6. An additional duty of 1s. 3d. per gallon is imposed upon stills. § 2. To be levied in the same manner and under the same penalties as by any former act. § 3. And every wooden still used as a boiler or receiver for the beer or wash, shall be guaged, and the duty paid on the whole number of gallons. § 6. This act to continue in force for the space of two years, &c.

By 4 *G.* 4. *c.* 13. § 1. Every wooden still used for the distillation of spirituous liquors shall be measured or guaged, and liable to the duties as hereinafter mentioned. Sec. 2. Every requisition for a wooden still shall express the number of gallons, and be in the following form.

"I, A. B. do require a license to work one wooden still, the entire capacity of which, by admeasurement, (or being guaged as the case may be) is capable of containing —— gallons, and no more. As witness my hand this —— day of ——.

A. B. owner and proprietor of the said still.

To J. L. inspector of the district.

Which requisition shall be filed and preserved by the inspector. Sec. 3. One-half only of the entire contents of such wooden still

shall be liable to the duties: provided that every wooden still having an additional tub or vessel, whether on the top or otherwise attached to such still, serving the purpose of a cap or receiver of steam, and also every tub that shall be separated into different divisions, for the purpose of receiving and running the low wines, or for heating and preparing the beer or wash for charging such still, or that may be so divided for any purpose whatever, every such tub or wooden still shall be charged with the duties upon the whole capacity of the same. Sec. 4. In order to ascertain the capacity of any still, the inspector is authorised to bore one or more holes in such wooden still or stills, not exceeding two inches in diameter, to measure or guage the same; provided nevertheless, that every still specified in the requisition to have been measured or guaged, shall be measured or guaged. Sec. 5. Any person using or working any wooden still, without a license, or using any other, or larger wooden still, or who shall have or use any tub or vessel as a cap, or otherwise attached to any such wooden still, with any false head therein, by which the same shall be separated into different divisions, and shall not state the same in the requisition, and shall be convicted before any two justices of the district, shall be liable to all the pains, penalties, and forfeitures mentioned in any former act. Sec. 6. The tub or receiver of the beer or wash only, shall be deemed to be a still subject to the duties. Sec. 7. In addition to the duty of 1s. 3d. per gallon, now raised, the further sum of 1s. 3d. per gallon shall be raised and levied on all stills. Sec. 8. To be raised, levied, collected and paid, in the same manner and under the same penalties as are imposed by any former act. Sec. 12. This act to continue in force until the 5th of January 1827, and to the end of the next session, [continued by the 9 *G.* 4. *c.* 9. for four years &c.] and again [continued by the 4 *W.* 4. *c.* 49. for four years &c.]

Form of an Information against a party, for using a Still without being duly Licensed.—Penalty £10. 34. *G.* 3. *c.* 11.

Home District, } Be it remembered, that on the —— day of ——
to wit. } in the year of our Lord —— at —— in the said district, A. B. of —— inspector of the said district, who as well for our sovereign lord the king as for himself, doth prosecute in this behalf, personally cometh before me J. P. esquire, one of his Majesty's justices of the peace for the said district, and as well for our said lord the king as for himself, informeth me, that C. D. late of the township of —— in the said district, distiller, within the space of six months now last past, to wit, on the —— day of —— in the year aforesaid, at the township aforesaid, in the dis-

trict aforesaid, did use, and cause and procure to be used, a certain still, for the purpose of distilling spirits for sale, without having been first duly licensed, contrary to the form of the statute in such case made and provided, whereby &c. [conclude as in the form given ante p. 239].

For using a Still of larger dimensions than expressed in the License. Penalty £10. 34 *G.* 3. *c.* 11.

Commencement as before] That C. D. late of the township of—— in the said district, yeoman, being a person duly licensed to use a certain still, to wit, a still of the capacity of —— gallons, for the distillation of spirituous liquors, from the fifth day of January now last past, for the space of one year then next ensuing, in the district aforesaid, and while such license was in force, to wit, on the —— day of —— in the year aforesaid, at the township aforesaid, in the district aforesaid, did use, and cause and procure to be used, a certain still for the purpose of distilling spirits, of larger dimensions than the still specified in his license, as aforesaid, (or had in his possession a certain still, erected and set up over a furnace (or fire-place) so that the same might be used for distilling, and capable of containing a greater number of gallons in the body thereof, than the number of gallons specified in his license as aforesaid,) to wit, of the dimensions of —— gallons, contrary to the form of the statute, &c. [as in the last form.]

Information against a Party for refusing admittance to an Inspector, to measure a Still.—Penalty £25. 44 *G.* 3. *c.* 7. § 4.

Commencement as before] That C. D. late of the township of —— in the said district, yeoman, being a person duly licensed to use a certain still for distilling spirituous liquors, from the fifth day of January now last past, for the space of one whole year then next ensuing, and having in his possession a certain still for distilling spirituous liquors, while such license was in force, to wit, on the —— day of —— in the year aforesaid, in a certain still-house in the possession of him the said C. D. at the township aforesaid, in the district aforesaid, did on the day and year last aforesaid, at the township aforesaid, in the district aforesaid, refuse to admit the said A. B. then and there being and demanding admission into such still-house, as such inspector as aforesaid, to measure the said still, so being therein as aforesaid, the said still last mentioned not then being charged, (or he the said A. B. having given due notice to the said C. D. the proprietor of the same, of his intention to measure the same,) contrary to the form of the statute &c. [*conclude as before.*]

The "Summons, 'Conviction," and other forms, will be found under their respective titles.

Recognizance to Prosecute an Appeal, under the 44 G. 3. c. 7.

See title "Appeal," *ante* p. 18.

SUBPŒNA.—See the form of one under title 'Sessions,' *ante p.* 411.

SUMMARY PUNISHMENT.

BY the 4 *W.* 4. *c.* 4. § 1. It is enacted that if any person shall assault or beat any other person, any justice of the peace may hear and determine the offence; and upon conviction, the offender shall pay any sum, not exceeding £5, in the discretion of the justice. § 2. But if the assault was made with intent to commit felony, or if otherwise a fit subject for prosecution by indictment, the case shall then be dealt with as before the passing of this act. § 3. If any person shall wilfully or maliciously commit any damage, injury or spoil, to or upon any real or personal property whatsoever, either of a public or private nature, (not amounting to felony,) he shall, on conviction, forfeit any sum not exceeding £5, at the discretion of the justice, to be paid to the party aggrieved, except when such party shall have been examined in proof of the offence: the act, however, excepts any party trespassing under a fair claim of right. § 5. any person found committing trespass may be apprehended without a warrant, by any peace officer, owner, or authorised servant. § 6. Any person wilfully disturbing any religious congregation by rude and indecent behaviour, or noise, either within the place of worship, or so near as to disturb the meeting, upon conviction before one justice, on the oath of one or more witnesses, shall forfeit any sum not exceeding £5, as the justice shall think fit; § 7. To be levied, with costs, by distress, and in default, commitment to the common gaol for any term not exceeding one month, unless sooner paid. § 8. Prosecutions under this act to be commenced within three calendar months. § 9. Directs that the party shall be summoned, and in case of non-appearance, the justice may proceed exparte. § 10. Enacts that any person, preferring a frivolous charge, shall pay the costs, which shall be levied by distress; and if no distress, the party shall be committed for any term not exceeding ten days. § 11. The certificate thereof to be in the following form:

"Be it remembered, that on the —— day of ——, in the year "of our Lord ——, at ——, in the county of ——, (or district, "riding, or division, as the case may be,) A. B. of ——, was

"brought before me, C. D. one of his Majesty's justices of the "peace for the said county, (or district, riding, or division, as the "case may be,) upon a charge preferred against him by E. F. of "——, (specify the offence and the time and place when and where "the same is alleged to have been committed,) and upon investi- "gating such charge I have dismissed the same; and I order and "adjudge the said E. F. to pay the sum of —— for costs, and in "default of payment thereof immediately, that there be levied of "the goods and chattels of the said E. F. the said sum of ——, "within —— days from the date thereof; and in case there shall "be no goods or chattels found of the said E. F. whereof the "amount can be made at the time aforesaid, then that the said E. "F. be (or on or before the —— day of —— next) imprisoned in "the common gaol of the said county of ——, (or district, riding, "or division, as the case may be,) for the space of —— days, un- "less the same shall be sooner paid. Given under my hand and "seal, the day and year first above mentioned."

By § 12. Persons convicted under this act shall be released from further prosecution for the same offence. § 13. And aiders and abettors punished as principals. § 14. Persons convicted may be discharged from such conviction, upon making satisfaction to the party injured. § 15. Conviction to be in the following form:

"Be it remembered, that on the —— day of ——, in the year "of our Lord ——, at ——, in the county of ——, (or district, "riding, or division, as the case may be,) A. B. of ——, is con- "victed before me, C. D. one of his Majesty's justices of the peace "for the said county, (or district, &c.) for that he, the said A. B. "did, (specify the offence, and the time and place when and where "the same was committed,) and I, the said C. D. adjudged the "said A. B. for his offence, to forfeit and pay immediately, or on "or before the —— day of ——, (here state the penalty actually "imposed, or the amount of the injury done,) and also pay the "sum of —— for costs, and in default of payment of the said sums "to be imprisoned in the county gaol of the said county, (or dis- "trict, &c.) for the space of ——, unless the said sums shall be "sooner paid, or (I order that the said sums shall be paid by the "said A. B. on or before the —— day of ——,) and I direct that "the said sum of —— (the penalty) shall be paid to —— of —— "(treasurer of the county, district, riding or division,) aforesaid, "in which the said offence was committed, to be by him applied "according to the provisions of this act, (or, I order that the sum "of —— (the amount of any injury done) shall be paid to E. F. "the party aggrieved, unless he is unknown or has been examined "in proof of the offence, (in which case state the fact and dispose

"of the whole, like the penalty as before;) and I order that the "said sum of —— for costs, shall be paid to ——, the complain- "ant. Given under my hand and seal, the day and year first "above mentioned."

Sec. 16. If in any case the title to any lands, &c. shall come in question, then the case shall not be decided under this act, but otherwise disposed of according to law. § 16. Any person aggrieved may appeal to the next general quarter sessions, giving the other party notice in writing of such appeal, and of the cause and matter, within three days after conviction, and seven days before the sessions, and entering into recognizance with two sureties before a justice, to appear and try such appeal, and abide the judgment of the court; and the sessions shall hear and determine the same; and in case of the dismissal of the appeal or affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall issue process for enforcing such judgment. § 18. The court shall have power to empannel a jury to try the matter, and administer the following oath to such jury:

"You ——, do solemnly swear that you will well and truly try the matter of the complaint of C. D. against E. F. and a true verdict give, according to the evidence. So help you God."

Sec. 19. Directs that justices shall transmit convictions to the next general quarter sessions. § 20. That no conviction shall be quashed for want of form, and no commitment void by reason of any defect therein, provided it be alleged that the party has been convicted, and there be a good and valid conviction. § 21. Actions against any person for any thing done in pursuance of this act, shall be laid in the district where the fact was committed, and shall be commenced within six calendar months after the fact committed; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month, at least, before the commencement of the action; and no plaintiff shall recover in such action, if tender of sufficient amends shall have been made before such action brought, or a sufficient sum paid into court after such action brought on behalf of the defendant; and if a verdict shall be given for the defendant, he shall recover his full costs, as between attorney and client. § 22. His Majesty's pardon may be extended to any person imprisoned under this act. § 23. Fines forfeitures and penalties shall be paid to the pathmaster or street surveyor of the division where the offence was committed, in aid of the roads. § 24. This act to continue in force four years, and to the end of the then next ensuing *parliament*, (not *session*, which, however, was probably intended.)

The common forms of "Information," "Summons," and other proceedings which will be found under their respective titles, may be easily adapted for any proceeding under this act. The forms of conviction, &c. embodied in the act must, however, be used.

Notice of Appeal, to be given within three days after conviction and seven days before the Sessions.

Mr. A. B.

Take notice, that I, C. D. intend at the next general quarter sessions of the peace, to be holden in and for the — district, at — in the said district, to appeal against a certain conviction of me, the said C. D. by J. P. Esquire, one of his Majesty's justices of the peace for the said district, for having, as is therein and thereby alleged, [on —— &c. at —— &c. stating the offence,] and that the cause and matter of such appeal are, [that I am not guilty of the said offence,] and that [stating any other causes of appeal the party may have] of all which premises you [and each and every of you] are hereby desired to take notice. Dated this —— day of ——, &c. Witness E. F. C. D.

Recognizance thereon,

May be in the form given in p. 18. *ante.*

SUMMONS.

A SUMMONS is the usual process issued by justices to procure the attendance of a person accused, where the offence is between party and party, and not of an aggravated nature; but where the offence is of a higher nature, as felony, breach of the peace, &c. and in cases where the King is a party, it may be proper to issue a warrant in the first instance. In petty assaults, though justices are authorized to issue a warrant on complaint, on oath of the party, yet a summons is more advisable, as in many cases it is found that there is little or no pretence for the accusation. *Paley* 18. A summons may be either directed to the party, or to a constable, requiring him to summon the party. *Paley*, 18.— Where the summons is directed to the constable, or a third person, a *copy* of it, plainly and legibly written on paper, should be served personally upon the party accused; if directed to the party himself, the *original* should be personally served upon him, and a copy of it kept by the party serving it. It should be personally served upon the party accused, unless where personal service is expressly dispensed with by statute. *Arch Com.* 97. The justice should fix the time of day when the party should attend; for though the accused is bound (if the summons is to attend

a petty sessions) to wait until the magistrates can attend to the complaint, yet it is reasonable to appoint a time *when* the complaint can probably be heard. *Toone*, 858. In general, a summons may be granted without the oath of the complaining party; but in some cases, the oath is indispensible, as in complaints between masters and servants, &c. and in all cases where so directed by statute; and if the complaint is on oath, it should be so stated in the summons. *Toone*, 858. But an information for a penalty need not be upon oath, unless the statute requires it. 8 *T. R.* 508. Where a particular form of notice or summons is required by a statute, that must be strictly pursued. *Paley*, 18. Where the defendant, after being duly served with the summons, neglects to appear before the magistrate, he may be, in that case, convicted in his absence. *R. v. Simpson*, 1 *Str.* 44. 10 *Mod.* 248. 341. 370. But proof should previously be given of the service of the summons. *Paley*, 21. And see 5 *G.* 2. *c.* 25. § 7.—6 *G.* 2. *c.* 9. § 22.—In a case where a defendant was convicted without a previous summons, the court of King's bench granted a criminal information against the justice. *R. v. Venables*, 2 *Ld. R.* 1407. The defendant should be allowed a reasonable time for his appearance, for a summons to appear *immediately*, or upon the *same day*, would be bad, unless cured by the defendant's appearance. *R. v. Mallison*, 2 *Burr*, 681. *R. v. Johnson*, 1 *Str.* 261.

Summons, when directed to the Constable. (Archbold.)

Home District, } To the constable of ———
to wit. } Whereas, A. B. of ———, in the district aforesaid, labourer, hath this day been charged before me, J. P. one of his Majesty's justices of the peace for the district aforesaid, on the oath of a credible witness, for that he, the said A. B. on the ——— day of ———, in the year of our Lord, 1834, at ——— in the said district, did *(here state the offence)*. These are, therefore, to require you forthwith to summon the said A. B. to appear before me, at ——— in the said district, on ——— next, the ——— day of ———, instant, at the hour of ——— in the forenoon of the same day, to answer the said charge, and to be further dealt with according to law; and be you then there to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal, the ——— day of ———, in the year of our Lord, 1834.

Oath of the service of such Summons.

Home District, } The within named ——, constable of ——,
to wit. } maketh oath and saith, that he did, on —— the

—— day of ——, personally serve the within named A. B. with a true copy of the within written summons. Sworn, &c.

Summons, when directed to the Party. (Archbold.)

Home District, } To A. B. of —— in the said district, yeoman.
to wit. } Whereas you have this day been charged before me, J. P. Esq. one of his Majesty's justices of the peace for the district aforesaid, on the oath of one credible witness, for that you, on the —— day of —— last, at —— in the district aforesaid, did &c. *(here state the offence as in the information.)*— These are, therefore, to require you to appear before me, at —— in the said district, on —— next, the —— day of ——, instant, at the hour of —— o'clock in the ——noon of the same day, to answer to the said charge, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the ——day of —— in the year of our Lord, ——.

Oath of the service of such Summons.

Home District, } C. D. of ——, constable of the said township, maketh oath and saith, that he did, on—— the —— day of ——, instant, personally serve A. B. of ——, yeoman, with the original summons, under the hand and seal of J. P. Esquire, one of his Majesty's justices of the peace for the said district, of which the within is a true copy. Sworn, &c.

Summons for a Witness to be examined. (Toone.)

Home District, } To the constable of ——.
to wit. } Whereas, information hath been made before J. C. Esq. one of his Majesty's justices of the peace in and for the said district, that *(here state the offence committed, and by whom)* and that A. B. of ——, is a material witness to be examined concerning the same. These are, therefore, to require you to summon the said A. B. to appear before me, at —— in the said district, on —— the —— day of ——, at the hour of —— in the ——noon of the same day, to testify to the truth, according to the best of his knowledge concerning the premises. Given under my hand and seal, the —— day of ——, 1834.

SURETY FOR GOOD BEHAVIOUR.

A man may be compelled to find sureties of the peace, both for the good behaviour and for the peace; and yet the good behaviour includeth the peace, and he that is bound to the good beha-

viour, is therein also bound to the peace. *Dalt. c.* 122. The authority under which a justice of the peace may require surety for the good behaviour, is founded upon the statute, 34 *Ed.* 3. *c.* 1.; and the commission of the peace. No one ought to be bound to the good behaviour for any rash, quarrelsome, or unmannerly words, unless they either tend to a breach of the peace, or to scandalise the government, by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore, it seems that he who barely calls another "rogue" or "rascal," "liar" or "drunkard," ought not for such cause to be bound to the good behaviour. However, says Mr. Hawkins, I cannot find any certain or precise rules for the direction of the magistrate in this respect, and therefore am inclined to think that he has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous; as of those who sleep in the day and go abroad in the night; and of such as keep suspicious company; and of such as are generally suspected to be robbers, and the like; and of eaves-droppers; and of common drunkards; and all other persons whose misbehaviour may reasonably be intended to bring them within the meaning of the statute; as persons of evil fame, who being described by an expression of so great a latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties, he must shew the cause with sufficient certainty. 1 *Haw.* 132.

Mr. Dalton, (who wrote towards the latter end of King James the first,) in order to determine the same with some kind of certainty, has inserted the following, as instances in which sureties of the good behaviour may be granted, viz:

Against—1. Rioters.—2. Barrators.—3. Common quarrellers and common breakers of the peace.—4. Such as lie in wait to rob; or shall be suspected to lie in wait to rob; or shall assault or attempt to rob another; or shall put passengers in fear or peril; or shall be generally suspected to be robbers on the highway.—5. Such as are like to commit murder, homicide, or other grievance to any of the King's subjects in their bodies.—6. Such as shall practise to poison another; one instance of which may be the poisoning of their food: thus Mr. Dalton granted a warrant for the good behaviour against one who had bought ratsbane, and mingled it with corn, and then cast it amonst his neighbours fowls, whereby most of them died. 7. Such as in the presence of the justice shall misbehave himself in some outrageous manner of force or fraud. 8. Such as are greatly defamed for resorting to houses suspected to maintain adultery, or incontinency. 9. Maintainers of houses commonly suspected to be houses of common bawdry,

10. Common whoremongers and common whores. 11. Night walkers, that shall eaves-drop men's houses; or shall cast men's gates, carts, or the like into ponds; or commit other outrages or misdemeanors in the night; or shall be suspected to be pilferers, or otherwise like to disturb the peace; or that be persons of ill behaviour, or of evil fame or report generally; or that shall keep company with such, or with any other suspicious persons in the night. 12. Suspected persons who live idly, and yet fare well, or are well apparelled, having nothing whereon to live, unless, upon examination, they shall give a good account of such their living. 13. Common gamesters. 14. Such as raise hue-and-cry without cause. 15. Libellers. 16. Putative father of a bastard child.* 17. Such as persuade or procure the putative father of a bastard child to run away. 18. Such as abuse a justice's warrant, or shall abuse him, or the constable in executing their office. Nay, it seemeth, he says, that he who shall use words of contempt, or contrary to good manners, against a justice of the peace, though it be not at such a time as he is executing his office, yet he shall be bound to his good behaviour. 19. Such as charge another before a justice with felony, riot, or forcible entry, and yet will not prosecute or give evidence. 20. In general, whatsoever act or thing is in itself a misbehaviour, is cause sufficient to bind such an offender to the good behaviour. *Dalt. c.* 124.

To which may be added—21. Forcible entry. 1 *Haw.* 124. 22. The author of any writing full of obscene ribaldry. 1 *Haw.* 195. 23. For striking a person in the presence of the justices. *Crom.* 124. 24. For threatening so as to deter witnesses from attending a court of justice. *Ib.* 125.

For what it shall be forfeited.

Mr. Hawkins says, it has been laid down as a general rule that whatever will be a good cause to bind a man to his good behaviour, will forfeit a recognizance for it; but this has since been denied, and indeed seems to be by no means maintainable; because the statute, in ordering persons of *evil fame* to be bound in this manner, seems in many places chiefly to regard the prevention of that mischief, which they may justly be suspected to be likely to do; and in that respect requires them to secure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in such cases to make persons forfeit their recognizance who may yet justly be compelled to

* There being no poor-laws in this province, an offender of this sort would not, probably, be liable.

give one, as those who keep suspicious company; or those who spend much money idly, without having any visible means of getting it honestly; or those who lie under a general suspicion of being rogues and the like. 1 *Haw.* 132. 133. However, it seems, that such a recognizance shall not only be forfeited for such actual breaches of the peace, for which a recognizance for the peace may be forfeited, but also for some others for which such a recognizance cannot be forfeited; as for going round with great numbers to the terror of the people, or speaking words tending to sedition; and also, for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what may perhaps never happen. 1 *Haw.* 133.

For the forms requisite under this title, see "Articles of the Peace," the forms in which may be easily adapted to any case that may arise under this head, observing throughout to confine the subject matter to "surety of the good behaviour," omitting the words, "surety for the peace."

SWEARING.

By Stat. 19 *G.* 2. *c.* 21. It is enacted, that if any person shall profanely curse or swear, and be thereof convicted on confession, or oath of one witness before one justice, he shall forfeit as follows: Every-day labourer, common soldier, or common seaman, *one shilling;* every other person under the degree of a gentleman, *two shillings;* and every person of or above the degree of a gentleman, *five shillings;* and for a second offence after conviction, *double;* and for every other offence after conviction, treble;—which said penalties shall go to the poor of the parish. If such person shall curse or swear in the presence and hearing of a justice, he shall convict him without any other proof. § 2. If in the presence and hearing of a constable, if he is *unknown* to such constable, the said constable shall seize and carry him forthwith before the *next* justice, who shall convict him upon the oath of such constable. If he is *known* to such constable, he shall speedily make information before some justice, in order that he may be convicted. § 3. So that the constable, if it is in his hearing, is required to prosecute; but any other person also may prosecute if he pleases. And such justice shall immediately, on such information on the oath of any constable, or of any other person, cause the offender to appear before him, and on proof of such information convict him; and if he shall not immediately pay down the penalty, or give security to the satisfaction of such justice, he may commit him to the house of correction, to be kept to hard labour for ten days. § 4. Also, the charges of the information and con-

viction shall be paid by the offender, if able, over and above the penalties, which charges shall be ascertained by such justice. § 11. But for the information, summons and conviction, no more shall be paid to the justice's clerk than 1*s.* o 15. And if he shall not immediately pay such charges, or give security to the satisfaction of such justice, he may commit him to the house of correction, to be kept to hard labour for 6 days, over and above such time for which he may be committed for the penalties. § 11. But if such soldier or seaman shall not pay or secure the penalty, and also the costs, he shall, instead of being committed, be ordered to be publicly set in the stocks for one hour for every single offence, and for any number of offences whereof, he shall be convicted at one and the same time, two hours. § 5. The conviction shall be in the words and form following:

"Be it remembered, that on the ——— day of ———, in the ——— year of his Majesty's reign, A. B. was convicted before me, one of his Majesty's justices of the peace for the county, riding, division or liberty aforesaid, (or before me, ———, mayor of the city or town of ———, within the county of ———,) of swearing one or more profane oath or oaths, or of cursing one or more profane curse or curses. Given under my hand and seal, the day and year aforesaid." § 8.

Which conviction shall not be removed by certiorari. § 9.—And the justice shall cause the conviction to be fairly wrote upon parchment, and returned to the next general or quarter sessions, to be filed by the clerk of the peace, and kept among the records. § 6. Constable omitting his duty, shall, on conviction on oath of one witness before one justice, forfeit 40*s.* to be levied by distress, half to the informer, and half to the poor; and in default, commitment to the house of correction, with hard labour for one month. And this act shall be publicly read four times in the year, in all churches and chapels, by the minister immediately after morning and evening prayer, on the Sundays next after 25th March, 24th June, 29th September, and 25th December, on pain of £5 for every offence, to be levied by distress. §. 14. Prosecutions under this act, to be within 8 days after the offence committed. § 13.

Information. (Burn.)

Home District, } The information of A. I. of ——— in the } district aforesaid, yeoman, made on oath, this ——— day of———, in the ——— year of the reign of ——— before J. P. Esquire, one of his Majesty's justices of the peace for the said district, who saith, that on ——— the ——— day of ———, now last past, at ——— in the said district, he heard A.

O. of ——— in the said district, yeoman, swear one profane oath, (or curse one profane curse,) in these words, that is to say, &c. [here insert the precise words used by the defendant.]

Summons. (BURN.)

Home District, } To the constable of ——— in the said district. } Whereas, information hath this day been made before me, J. P. Esquire, one of his Majesty's justices of the peace for the said district, upon the oath of A. I. of ——, yeoman, that on the —— day of this present month of ——, he heard A. O. of —— in the said district, yeoman, at —— in the said district, swear one profane oath, (or curse one profane curse.) These are, therefore, to command you to cause the said A. O. forthwith to appear before me, to answer the premises, and to be further dealt with according to law. Given under my hand and seal, at —— in the said district, on the —— day of ——, in the —— year of ——.

Conviction. (See the form in the Act.)

Commitment. (BURN.)

Home District. } To the constable of —— in the said district, } and to the keeper of the house of correction at the city of Toronto, in the said district. Whereas, A. O. of —— in the said district, day labourer, is, and stands convicted this day before me, J. P. Esquire, one of his Majesty's justices of the peace for the said district, of swearing one profane oath on the —— day of this present month of ——, at —— in the said district: whereby he hath forfeited the sum of one shilling, to be applied in the manner by law directed; and whereas, the said A. O. hath refused, and doth refuse to pay down the said sum of one shilling, to be applied as aforesaid, and also hath refused and doth refuse to give satisfactory security to pay the same. These are, therefore, to require you, the said constable, to convey the said A. O. to the house of correction at the city of Toronto, in the said district, and to deliver him to the keeper thereof, together with this warrant. And I do hereby command you, the said keeper, to receive him, the said A. O. into your custody in the said house of correction, and there to detain and keep him to hard labour, for the space of ten days. And for so doing, this shall be your sufficient warrant. Given under my hand and seal, at —— in the said district, —— the —— day of ——, in the —— year of the reign of ——.

If he also refuse to pay the security, these words may be added, —"satisfactory to pay the same: and whereas, the said A. O. hath likewise refused, and doth refuse to pay the sum of one shilling, which I have settled and ascertained as and for the charges of the proceedings against him, touching the premises, and hath refused, and doth refuse to give satisfactory security to pay the same. These are, therefore, to require you, &c. —— for the space of sixteen days ——."

Tavern Licenses.—See title "Inns and Inn-Keepers," *ante.* *p.* 239.

THEFTBOTE.

Theftbote (from the Saxon *theft* and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends not to prosecute. 1 *Haw.* 125. See title "Compounding felony," *ante* p. 121.

THREATS.

If one man threaten another, to deter him from doing some lawful act, or to compel him to do some unlawful one, or with intent to extort money from him, or obtain any other benefit (whether real or imaginary,) to the person who makes use of the threat; this has always been considered a misdemeanor at common law. Thus, to threaten a plaintiff for suing a defendant, or a counsellor or attorney for being employed against any party in a suit; a juror for his verdict; or a gaoler, or other ministerial officer, for keeping a prisoner in custody, and properly executing his duty—are offences, for which the party may be indicted and punished by fine or imprisonment. 2 *Inst.* 141. 4 *Bl. Com.* 126. 2 *Chit. C. L.* 149.

With respect to *threats* of personal violence, or any other threats by which a man is put in fear, and by means of which money or other property is actually extorted from him, these we have already seen, amount to the crime of "robbery." *See ante p.* 401. So a mere demand of money, or other valuable thing, made with *menaces*, and with intent to steal the same, although no money is actually extorted, is a transportable felony, 7 *G.* 2. *c.* 21.; which last offence has been treated of (at p. 403) in considering the crime of "robbery." But the threats which we have now chiefly to deal with, are those contained in *letters* or *other writings*, sent or delivered to the party threatened, by which he is menaced with death or the burning of his house, or with the infliction of any other dire

calamity, when accompanied with a demand of money; or with an accusation of having committed some heinous crime, for the purpose of extorting money. This was formerly considered so great an offence that it was made high treason, by the statute of 8 *H.* 5. *c.* 6.

By the 9 *G.* 1. *c.* 22. § 1. (called the *black act,)* if any person knowingly send any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing, it is felony without clergy. And the same with respect to those who by gift, promise of money, or other reward, procure any of his Majesty's subjects to join him or them in such unlawful act.

By the 30 *G.* 2. *c.* 4. all persons who shall knowingly send or deliver any letter or writing, with or without a name or names subscribed thereto, or signed with a fictitious name or names, letter or letters threatening to accuse any person of any crime punishable by law with death, transportation, pillory, or other infamous punishment, with a view or intent to extort or gain money, goods, wares or merchandizes, from the person or persons so threatened to be accused, shall be deemed offenders against law and the public peace; and the court before whom he shall be convicted may order such offender to be fined and imprisoned, or put in the pillory, or publicly whipped, or to be transported for seven years.

By the 27 *G.* 3. *c.* 15. if any person or persons shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name or names, letter or letters threatening to kill or murder any of his Majesty's subjects, or to burn their houses, out-houses, barns, stacks of corn and grain, hay or straw, though no money or venison or other valuable thing shall be thereby demanded, every such offender shall suffer death without benefit of clergy.

Commitment for sending a letter demanding money, &c. (Felony.) 9 *G.* 1. *c.* 22. (Archbold.)

Commencement, as ante, p. 118.] on the —— day of ——, in the year of our Lord ——, at —— aforesaid, in the district aforesaid, knowingly and feloniously did send [*send or deliver*] to [the said] C. D. a certain letter [*letter or writing*] directed to the said C. D. demanding money [or "a certain chattel," to wit. —— or "a certain valuable security, to wit. ——,"] of and and from the said C. D. with menaces, and without any reasonable or probable cause; against the form of the statute in that case made and provided. And you, the said keeper, &c. *as ante p.* 119, *to the end.*

Commitment for threatening to accuse a man of a crime, with intent to extort Money. (Misdemeanor.) 30 *G.* 2. *c.* 24.

Commencement, as ante, p. 118.] on the ——— day of ———, in the year of our Lord———, at———in the said district, did threaten [the said] C. D. to accuse [accuse or threaten to accuse] him, the said C. D. of having [attempted and endeavored to commit a rape upon Ann, the wife of the said A. B.] with a view to extort and gain money [*chattels, money, or valuable security*] from the said C. D. against the form of the statute in that case made and provided. And you, the said keeper, &c. *as ante p.* 119, *to the end.*

Town Clerk.—See post "Town Meeting."

TOWN MEETING.

By Stat. 33 *G.* 3. *c.* 2. It is enacted that it shall be lawful, as soon as conveniently might be after passing this act, for any two justices acting within the division in which any parish, township, reputed township or place may be, to issue their warrant, giving 8 days notice to the constable of such parish &c., authorising him on a day to be fixed by such justices in that year,and on the first Monday in the month of March, [altered to January by the 57 *G.* 3. *c.* 7.] in every ensuing year to assemble the inhabitant householders, paying or liable to pay, any public assessment or rate of such parish, &c., in the parish church or chapel, or some other convenient place in the township, &c., for the purpose of choosing town officers for the year ensuing, at which meeting the constable shall preside. § 2. A town clerk shall be chosen, who shall make a true list of every male and female inhabitant within the limits of his parish, &c., and return the same to the justices aforesaid, to be produced by them at the sessions in April ; [his duties, as to the census are repealed by the 4 *G.* 4. *c.* 7.] and the said clerk shall enter and record all matters relating to the parish or township, keeping and delivering such records to his successors. § 3. Two assessors shall be appointed to assess all such rates and taxes as shall be imposed by the legislature on the inhabitants of the said township; § 4. And one collector of the same; § 5. And not less than 2, nor more than 6, [enlarged to 30 by the 11 *G.* 4. *c.* 7.] persons, as shall be specified in the warrant, [to be issued by the justices,] to serve as overseers of the highways and roads, which overseers shall also serve the office of *fence-viewers*, and are hereby authorised and required upon receiving proper notice, to view and determine the height and suffi-

ciency of any fence within their respective parish, township, &c., conformably to any resolutions that may be agreed upon at such town meetings; § 6. And to choose a person or persons [limited to 6 by the 11 *G.* 4. *c.* 7.] as pound-keeper, to impound all cattle, horses, sheep, and hogs, trespassing on the lands of any person, having enclosed the same by such high and sufficient fence, as shall be agreed on as aforesaid; and to inpound any stone horse more than a year old, running at large upon the highways or commons, and to detain such horse until the owner shall have paid 20s.; one-half to the person taking such horse, and the other to the public funds. § 7. Also, two town wardens, but as soon as any church shall be built and a parson or minister be duly appointed thereto, then the inhabitants shall choose one, and the said parson or minister the other, which persons shall jointly serve the office of church-wardens; and that such town or church-wardens, and their successors duly appointed, shall be as a corporation to represent the whole township, and shall and may sue, prosecute, or defend in all presentments, indictments, or actions, for and on behalf of the parish. § 8. The constable shall forthwith communicate a list of the officer schosen, signed by him to either of the justices, calling the said town meeting, and either of said justices, or any other of the justices acting within the division, may administer the following oath of office, to such town officers within 7 days after such meeting:

"You, A. B., do promise and swear, that you will faithfully, diligently, and justly serve and perform the office and duties of —— for —— according to the best of your abilities. So help you God;" and every person so sworn shall be held lawfully appointed. § 9. Every person so nominated, refusing to serve, or neglecting to take the oath within 7 days after such nomination, shall forfeit 40s. to be recovered on proof by confession or oath of one witness, before any one justice within the division, to be levied by distress and sale, and to be paid towards the public stock of the district, excepting the forfeiture of any person nominated as overseer, which shall be paid to the commissioners of the highways and roads. And the justices of the division in such case may hold a special session, for the purpose of naming one or more persons to serve the vacant offices. And if the persons so named, upon being served with due notice by the constable, shall neglect or refuse, by the space of seven days after such service, to accept the office and take the oath, he shall forfeit 40s. to be levied and paid over as aforesaid. § 10. Justices, within the respective limits of their commissions, at their general quarter sessions in April, shall appoint, yearly, a high constable in each and every district, and a sufficient number of constables, as in their discretion will be

necessary in each parish, township, reputed township or place, and the said constables, before they enter into their office, shall take the following oath, to be administered by any justice:

"You shall well and truly serve our sovereign lord the King, in the office of ——— for the ——— of ———, for the year ensuing, according to the best of your skill and knowledge. So help you God."

Persons appointed to any office under this act, shall be exempt for three years afterwards. § 12. That when any townsbip shall not contain 30 inhabitant householders, the said inhabitant householders shall be joined to, and reputed as inhabitants of the township adjacent thereto, which shall contain the smallest number of inhabitants. Sec. 13 The fees and prequisites of the town clerks and pound keepers, shall be regulated at the April sessions.

B 4 *G.* 4. *c.* 7. so much of the 33 *G.* 3. as relates to the taking a complete list of every male and female, by the town clerk, is repealed. § 2. Such duty shall be performed by the assessors.—See further on this subject under the title "Census," *ante* p. 93. 94.

By 46 *G.* 3. *c.* 6. § 1. The justices in quarter sessions are authorised to appoint a successor to any town officer dying within the year. § 2. And when, from any neglect, a town meeting shall not be held on the first Monday in March, (i. e. January, 57 *G.* 3 *c.* 7.) *a*—the justices in sessions may appoint town officers till the next town meeting. § 3. After such appointment, the clerk of the peace, within eight days, shall send a written notice to each officer so appointed, requiring him to appear within eight days after such notice, and take the following oath before any justice:

"You, A. B. do promise and swear [or if a Quaker, affirm,] that you will faithfully, diligently, and justly serve and perform the office of ———, for the ——— of ———, for the year ensuing, according to the best of your abilities. So help you God."

Sec. 5. Under the penalty of 40*s.* for neglect, to be recovered before the quarter sessions, who are empowered to appoint other officers thereupon. § 11. £5 per cent. to be allowed collectors on all sums by them collected. § 12. And they shall levy the arrears of preceding years. § 13. Officers appointed under this act shall have the like powers, and be subject to the same penalties as other officers: and all fines and forfeitures shall be applied as aforesaid.

By the 48 *G.* 3. *c.* 14. § 2. Every collector shall, within one month after nomination, enter into the following bond, with two sufficient freeholders, to the treasurer of the district:

Know all men by these presents, that I, A. B. collector of the rates for the township of ——— in the district of ———, C. D. and

E. F. of the same place, yeomen, [or as the case may be,] are held and firmly bound to I. O. treasurer of the district of ——, in the sum of two hundred pounds, lawful money of Upper Canada, for which payment well and truly to be made, we bind ourselves jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated at ——, this —— day of ——, &c. &c.

Sec. 3. Which bond shall be prepared by the town clerk, who shall transmit the same to the treasurer within one month after execution, and be allowed *5s.* out of the district treasury for the same. § 4. And if collectors shall die, or leave the place, the justices in quarter sessions may supply the vacancy.

By 53 *G.* 3. *c.* 9. § 1. The collector in each parish shall, once in three months, and oftener, if required by the magistrates in sessions, pay over to the treasurer all monies received. § 2. The condition of the collectors bond shall be as follows:

"The condition of this obligation is such, that if the above bounden A. B. shall collect and levy all the rates and assessments of the township (or townships) of ——, for the present year, ending on the first Monday of [March] next, so far as the law may enable him so to do; and shall pay all the monies which he shall so collect and levy to the treasurer of the said district, once in every three months, or oftener, if thereto required by the magistrates in general quarter sessions assembled; and if the said A. B. do well and truly collect and pay by the different payments to be made as aforesaid, the whole amount of all monies received by him on or before the 1st day of [March] next, ensuing his appointment as collector, then this obligation to be void, or else in full force."

N. B.—The 57 *G.* 3. *c.* 7. By which the time for holding Town Meetings was altered from March to *January*, would seemingly nullify the operation of this bond, the condition referring to the month of March next ensuing. But as all acts of Parliament are to be construed reasonably, and as it is clearly evident that the intention of the 33 *G.* 3. *c.* 9. was, that the bond should be for the whole current year, the word *January* may therefore be safely substituted for March.—*Ed.*

Sec. 3. Imposes a penalty of not less than £5, nor more than £25, upon any town clerk, who shall refuse or neglect to provide and transmit such bond, if executed, to the treasure, as by law is directed, to be recovered before two justices, on the oath of one witness, and levied by distress and sale, one moiety to the informer, the other to the province. Sec. 4. County of Prescott, in the E. district, excepted.

Justices' Warrant to assemble the Inhabitants.

Home District. } To the constable of the township of ——, in the } said district ——. By virtue of a power for such purpose granted by a certain act of the legislature of this

province, made and passed in the thirty-third year of the reign of King George the Third, to us, A. B. Esquire, and C. D. Esquire, two of his Majesty's justices of the peace in and for the said district, these are to authorise and require you, giving eight days previous notice, to assemble the inhabitant householders, paying or liable to pay to any public assessment or rate, living within your parish or township, to meet at ——, on ——, for the purpose of choosing and nominating certain fit and proper persons to serve the offices herein specified, for the year ensuing, that is to say,—one town clerk; two assessors; one collector; two or more overseers of the highways and roads; one or more pound-keepers, and two town-wardens, according to the directions in the said act contained: and for so doing this shall be a sufficient warrant.

Given under our hands and seals at ——, the —— day of ——, in the year of the reign of his Majesty King ——, and in the year of our Lord ——. J. P. J. R.

Constable's Notice, to be given on a Nomination to an Office by the Justices.

Home District, } Township of }

Whereas, at a special session for that purpose, holden at the —— day of ——, by A. B. Esq. and C. D. Esq. two of his Majesty's justices of the peace for the said district, you were by the said justices nominated and appointed to serve the office of —— for the township of —— for the year next ensuing, by virtue of a power to them for that purpose granted by a certain act of the legislature of this province; these are therefore to notify unto you, that unless you accept the said office and take the oath prescribed, within seven days from the receipt of this notice, you shall, for such neglect or refusal, forfeit and pay the sum of 40*s.* as by the said act is directed. Dated this —— day of—— in the year of our Lord 18——. C. H. *Constable.*

To Mr. L. M.

Affidavit to be made by the Town Clerk as to the notification to Assessors of their appointment at Town Meeting.

A. B. town clerk of the township of ——, maketh oath and saith that he did, on the —— day of —— instant, [or last past] leave a notice in writing at the residences of C. D. and E. F. in the said township of —— of their having been chosen at the last annual town meeting assessors for the said township, for the present year. Sworn before me, this —— day of ——, 18——.

(Signed) A. B.

[N. B. If the town clerk should see the assessors and inform them of their appointments personally, then omit the words within the brackets and insert the following—"personally acquaint the said C. D. and E. F."]

Certificate to Treasurer of Town Clerk's notification of Assessors appointments.

Office of the Clerk of the Peace,
—— day of ——, 183—.

I hereby certify that A. B. town clerk of the township of ——, has notified to me the appointments of the two assessors of the said township for the present year, and is entitled to five shillings for each notification, which, be pleased to pay accordingly.

S. W. *C. of the P., H. D.*

To F. B. Esq. *Treasurer, H. D.*

Certificate to Assessors of having delivered the Census Roll.

Office of the Clerk of the Peace,
(Date.)

I hereby certify that A. B. assessor of the township of ——, has delivered to me the census roll for the said township for the present year, under oath, pursuant to the statute in such case made and provided. S. W. *C. of the P., H. H.*

Information against an Inhabitant householder for neglecting to serve, or take the Oath of Office within seven days—penalty 40*s.*
(It should not be upon Oath.)

Home District. } Be it remembered that on the —— day of ——,
to wit. } in the year of our Lord ——, at the township of —— in the the said district, A. B. of the said township, constable of the same, personally cometh before me, J. P. Esquire, one of his Majesty's justices of the peace for the said district, and informeth me that C. D. late of the same township, yeoman, was at a town meeting held at ——, in the said township, on Monday the —— day of January now last past, (*or* instant,) duly nominated to the office of —— of the said township, he the said C. D. then being an inhabitant householder in the said township, and liable to serve the said office; and that the said C. D. aftewards, to wit.—within the space of seven days next after such nomination as aforesaid, refused to serve and qualify himself to serve the said office by taking the oath in that behalf, contrary to the form of the statute in such case made and provided, whereby the said C. D. hath forfeited the sum of *forty shillings* for his said offence; wherefore the said A. B. prayeth that the said C. D. may be convicted of the offence aforesaid, and that he may be summoneed to make his defence thereto. Exhibited before me, C. D.

For the other forms of proceeding see titles "Summons," "Conviction," "Distress Warrant," &c.

TOWN OFFICERS.—See *ante.* "Town Meeting."

TRANSPORTATION.

BY 40 *G.* 3. *c.* 1. § 5. It is enacted, that when any person shall be convicted of any crime, for which he shall be liable by law to be transported, the court, instead of the sentence of transportation, shall order and adjudge that such person be banished from this province, for and during the same number of years, or term for which he or she would be liable by law to be transported, and do remove himself or herself therefrom, within a space of time to be fixed by the court, being not less than 2 days, nor more than 8, including the day of sentence. And any person found at large in any part of the province without some lawful excuse, after the time and before the expiration of the term, shall suffer death, as in cases of felony.

By the 3. *W.* 4. *c.* 4. This offence is not now *capital*, but is punishable as other felonies not of a capital nature.

Commitment for returning from Banishment.

Commencement as ante. p. 117.] having been banished from this province for the term of [seven years] in pursuance of a certain judgment against him for felony, feloniously and unlawfully, and without any lawful cause or excuse, was on the ——— day of ——— in the year of our Lord, ——— and before the expiration of the said term of [seven years] at large, at ——— in the district aforesaid, against the form of the statute in that case made and provided. And you, the said keeper, &c. as *ante. p.* 118.

TRAVELLERS.

BY 52 *G.* 3. *c.* 4. Entitled "an act to prevent damage to travellers on the highways in this province;" it is enacted, that it shall be the duty of every person travelling the highways with sleds or other carriages, when they meet each other, for each person to turn out to the right hand with their sleds or other carriages, and give one equal half of the road, highway or beaten track, for the more easy passing each other without doing damage to either party's team, sled or carriage. § 2. Any person refusing, shall forfeit and pay 10*s.* with reasonable costs, to be recovered before one justice, on confession or oath of one witness, to be levied by distress and sale, and in default commitment to the common gaol for any time not exceeding 3 days, unless such fine and costs be paid. § 3. Every person travelling with sleighs on any road, high-

way or beaten track, shall have two or more bells fixed to the harness, under the penalty of 10s. to be recovered as aforesaid. § 5. Complaints to be made within 10 days. § 6. Act to be in force for four years.

By the 56 *G.* 3 *c.* 11. § 3. One moiety of all fines under the above act, shall be paid to the informer, and the other moiety to the receiver general, for the use of the province. These acts were made permanent by the 59 *G.* 3. *c.* 17.

Information against a person for neglecting to give one half of the Road. Penalty, 10*s.*

Home District, } Be it remembered, that on the —— day of
to wit. } ——, in the year of our Lord, one thousand eight hundred and ——, at the township of —— in the district aforesaid, C. D. of —— in the said district, yeoman, who as well for our sovereign lord the King as for himself, doth prosecute in this behalf, personally cometh before me, J. P. Esquire, one of his Majesty's justices of the peace, for the said district, and as well for our said lord the King as for himself, informeth me, that he, this informant, within the space of 10 days, now last past, to wit: on the —— day of ——, in the year aforesaid, at the township aforesaid, in the district aforesaid, was travelling with a waggon, drawn by two horses, upon a certain road and highway in the said township, leading from —— in the district aforesaid, to —— in the same district, and that while so travelling upon the said road and highway as aforesaid, he, this informant met in and upon the said road and highway, one C. D. late of the township aforesaid, in the district aforesaid, yeoman, who was also travelling upon the said road and highway, in an opposite direction to this informant, with a certain other waggon, drawn by two horses; and this informant further saith, that the said C. D. upon the occasion aforesaid, neglected and refused to turn out to the right hand with his said waggon, and give to this informant one equal half of the width of the said road and highway there, for the more easy passing of each other, and that instead of so doing, he, the said C. D. on the occasion aforesaid, and while so passing this informant upon the said road and highway as aforesaid, [continued to travel on in the centre of the said road with his said waggon and horses, *or* the same side of the road upon which this informant was then and there lawfully travelling as aforesaid, to wit: the right hand side of the said road and highway leading from the said —— to ——] contrary to the form of the statute in such case made and provided, whereby and by force of the statute in such case made and provided, the said C. D. hath forfeited for his

said offence the sum of ten shillings, wherefore the said C. D. who prosecuteth as aforesaid, prayeth the consideration of me, the said justice in the premises, and that the said A. B. may be convicted of the offence aforesaid, and that one moiety of the said forfeiture may be adjudged to our said lord the King, and the other moiety thereof to the said C. D. according to the form of the statute in that case made and provided, and that the said A. B. may be summoned to appear before me and answer the premises, and make his defence thereto.

Exhibited before me, J. P. C. D.

N. B.—This informantion should not be upon oath. The offence must be proved by other testimony than that of the informer.

Summons on the preceding Information.

Home District, } To A. B. of —— in the said district, yeoman.
to wit. } Whereas, you have this day been charged before me, J. P. Esq. one of his Majesty's justices of the peace for the said district, in and by a certain information in writing, exhibited before me, the said justice, the —— day of —— in the year of our lord, —— by one C. D. of —— in the said district, yeoman, who therein informeth me, the said justice, that he, the said informant, within the space of ten days now last past, to wit: on the —— day of —— in the year aforesaid, at, &c. [*here set forth the offence as charged in the information to the concluding word* thereto.] These are, therefore, to require you to appear before me at —— in the said district, on —— next the —— day of —— instant, at the hour of —— in the forenoon of the same day, to answer to the said charge, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the —— day of —— in the year of our lord, ——.

The Conviction

Must be in the form required by the 2 *W.* 4. *c.* 4. See *ante. p.* 139. See also titles, "Distress," *ante. p.* 150. 151. and "Commitment," *ante. p.* 119.

Information against a person Travelling in a Sleigh without Bells affixed to the Harness. Penalty, 10*s.*

Commencement the same as in the last form] that A. B. late of the township of —— in the district aforesaid, within the space of ten days, now last past, to wit: on the —— day of —— in the year aforesaid, at the township aforesaid, in the district aforesaid, did travel upon a certain road and highway, leading from ——

to —— in the said district, in a certain sleigh, drawn by one horse, and without having any bell or bells affixed to the harness of the said horse, or otherwise, contrary &c. [*as in the last precedent.*]

The other forms referred to in the last may be easily adapted in this case. But it should be remarked, that the clause imposing the penalty for travelling without sleigh bells does not specifically give the costs of prosecution. It will therefore be proper to proceed for the costs, under the stat. 18 *G.* 3. *c.* 19. See *ante.* title "Costs," p. 141.

TRAVERSE.

By statute 3 *W.* 4. *c.* 4. § 111. No traverse, or other postponement of any trial, shall be allowed, except upon special cause shewn to the satisfaction of the court, or by consent of his Majesty's attorney or solicitor general prosecuting same.

TREASON.

Treason, according to *Lord Coke*, is derived from *trahir*, to betray; and *trahison*, by contraction treason, is the betraying itself. 3 *Inst.* 4. Treason, generally spoken, is intended not of petit treason, but of high treason only. 1 *H. H.* 316.

Of High Treason.

By the statute of the 25 *Ed.* 3. *st.* 5. *c.* 2. Which lord *Hale* calls a sacred act; and lord *Coke*, an excellent act; and the king who made it, a *blessed* king; and the parliament, a *blessed* parliament—all treasons which had been uncertain before, were settled; which act, by the 1 *Mar. sess.* 1. *c.* 1. is re-inforced, and again made the only standard of treason; and all statutes between the said statutes of the 25 *Ed.* 3. and 1 *Mar.* which made any offences high or petit treason, or misprision of treason, are abrogated, so that no offence is at this day to be esteemed high treason, unless it be either declared to be such by the said statute of the 25 *Ed.* 3. or made such by some statute since the 1 *Mar.*

The 25 *Ed.* 3. is as follows:—"Whereas divers opinions have been before this time, in what case treason shall be laid, and in what not, the king, at the request of the lords and commons, hath made a declaration in the manner as hereinafter followeth, that is to say:—when a man doth compass or imagine the death of our lord the King, or of our lady his Queen, or of their eldest son and heir; or if a man do violate the king's companion, (that is,

his wife. 3 *Inst.* 9.) or the king's eldest daughter, unmarried; or the wife of the king's eldest son and heir; or if a man do levy war against our lord the king in his realm; or be adherent to the king's enemies in his realm, giving them aid and comfort in the realm or elsewhere, and thereof be probably (proveablement, proveably) attainted of open deed by the people of their condition; and if a man counterfeit the king's great or privy seal, or his money; and if a man bring false money into the realm, counterfeit to the money of England, knowing the same to be false; and if a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize; and all other justices assigned to hear and determine, being in their places doing their offices."

And by the statute 1 *Mar. sess.* 1. *c.* 1. (which lord *Hale* calls another excellent law) "no act, deed or offence, being by act of parliament made treason, by words, writing, ciphering, deeds, or otherwise, whatsoever, shall be adjudged to be treason, but only such as be declared by the said statute of the 25 *Ed.* 3." And this, he says, at one blow laid flat all the numerous treasons at any time enacted since the 25 *Ed.* 3. 1 *H. H.* 308.

Lord Coke (3 *Inst.* 14. 140.) seems to be of opinion, upon the said act of the 25 *Ed.* 3. that *bare words* are not a sufficient *overt act* or *open deed*, whereby to convict a person of treason; but that they are misprision of treason only. So also lord Hale seems to think that words, unless put into writing, are not regularly an overt act. 1 *H. H.* 111. 118. But Mr. Hawkins argues the contrary; and amongst other reasons for his opinion, he observes that to charge a man with speaking treason is unquestionably actionable, which could not be if no words could amount to treason. Also, that as in case of felony, he who by command or persuasion induceth another to commit felony, is an accessory in felony, so he who does the same in treason is a principal traitor, (there being no accessories in treason, but all being principals): and yet such person doth no act but by words. 1 *Haw.* 39. And it has been the constant practice ever since the revolution at least, (1688) where a person, by treasonable discourses, hath manifested a design to murder or depose the King, to convict him upon such evidence; and in Lowick's case, *Holt, C. J.* declared that *express words* were not necessary to convict a man of high treason; but if from the tenor of his discourse the jury is satisfied he was engaged in a design against the King's life, this is sufficient to convict the prisoner. *Read. Treat.* 146.

Offences in relation to the coin, in England, are made treason by many statutes, but are scarcely applicable to this province.

The different treasons relating to the papists, or persons exercising the roman catholic religion, namely, that created by the 5 *Eliz. c.* 1. of defending the pope's jurisdiction in this realm; that created by the 27 *Eliz. c.* 2. of a popish priest tarrying three days in England without taking the oaths; that created by the 3 *Jac.* 1. *c.* 4. of any natural-born subject being reconciled to the See of Rome—have long become obsolete, and seem indeed to be now virtually repealed by the 31 *G.* 3. *c.* 32.

But there is one kind of treason declared by the 23 *Eliz. c.* 1. that is distinct from any treason of the last description, although the statute was made ostensibly against maintaining the authority of the See of Rome. By § 2. it is enacted, that all persons who shall pretend to have power, or shall by any means put in practice to absolve, persuade, or withdraw any subject from his natural obedience to her Majesty, or to promise any obedience to the See of Rome, or of any other prince, state or potentate; or shall do any overt act to that intent or purpose—shall be guilty of high treason. So by the 3 *Jac.* 1. *c.* 4. § 22. If any person shall, either upon the seas or beyond the seas, or in any other place within the dominions of his Majesty, his heirs and successors, put in practice to absolve, persuade or withdraw, any of the subjects of the King, or of his heirs or successors, of the realm of England, from their natural obedience to his Majesty, his heirs or successors, or to move them, or any of them, to promise obedience to any prince, state or potentate—every such person shall suffer as in cases of high treason. And by § 3. the like penalty attaches to any one being willingly so absolved or withdrawn from his allegiance, or who shall promise obedience to any such prince, state or potentate.

In high treason there are no accessories, but all are principals, and therefore whatever act or consent will make a man accessory to a felony before the act done, the same will make him a principal in case of high treason. 3 *Inst.* 9. 21.

By the 7 *W. c.* 21. No person shall be prosecuted for high treason but within three years after the offence committed, except in the case of designing to assassinate the King's person. And by the 31 *C.* 2. *c.* 2. persons committed for high treason shall be indicted the next term, or next assize, otherwise they shall be let to bail, unless it appear to the court, upon oath, that the witnesses for the King could not be produced in that time; and in such case, they shall be indicted the second term or assize, or else discharged.

By 7 *An. c.* 21 § 11. Persons indicted for high treason, or misprision of treason, shall have a copy of the indictment, and lists of the jurors and witnesses, delivered to them ten days before the trial; and shall have two such counsel as they shall desire as-

signed to them by the court, who shall have access to them at reasonable times. 7 *W. c.* 3.

The judgment for high treason (not relating to the coin) formerly was, that the offender should be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out and burnt before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the King's pleasure. 2 *Haw.* 443; but now, by the 3 *W.* 4. *c.* 4. the sentence is, that "such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead, and that afterwards, the body of such person shall be dissected and anatomized."

In the said judgment is implied forfeiture of lands and goods to the King; loss of dower; and corruption of blood. 3 *Inst.* 211. But after the death of the pretender, (and of his issue) no attainder for treason shall disinherit or prejudice any heir or other person, other than the offender, during his life. 7 *An. c.* 21. § 10. 17 *G.* 2. *c.* 39. § 3.

Petit Treason

Is where a servant slayeth his master, or a wife her husband, and is distinguishable from high treason in this way: high treason can only be committed against the King, or his government, &c. petit treason, against the King's subjects.

By the 3 *W.* 4. *c.* 4. The punishment for petit treason is the same as in cases of murder.

Misprision of Treason.

Misprision cometh of the French word *mespris*, which properly signifieth neglect or contempt, and misprision of treason, in legal understanding, signifieth when one knoweth of any treason, though no party or consenter to it, yet conceals it, and doth not reveal it in convenient time. 3 *Inst.* 36. 1 *H. H.* 371. The judgment of misprison of treason is, to be imprisoned during life, to forfeit all his goods for ever, and the profits of his lands during life. 3 *Inst.* 36. Every man, therefore, that knoweth a treason, ought with all speed to reveal it to the King, his privy council, or other magistrate. *H. Pl.* 127. But it seemeth that misprision of petit treason is not subject to the judgment of misprision of high treason, but only is punishable by fine and imprisonment, as in the case of misprision of felony. 1 *H. H.* 375.

Commitment for High Treason. (Archbold.)

Commencement as ante. p. 117.] on the —— day of —— in the year of our Lord, —— at —— in the said district, together with divers other false traitors unknown, armed and arrayed in a war-like manner, and unlawfully, maliciously and traitorously assembled and gathered together, most wickedly, maliciously and traitorously did levy and make war against our sovereign lord King —— within this province, against the form of the statute in that case made and provided. And you, the said keeper, &c. *as ante. p.* 118. *to the end.*

Another Form. (Archbold.)

On the —— day of ——, &c. and on divers other days, as well before as after, during an open and public war between our sovereign lord King —— and —— contriving and intending to aid and assist the said —— in the prosecution of the said war against our said lord the King, maliciously and traitorously was adhering to, and aiding and comforting the said —— so being then an enemy of our said lord the King. And you, the said keeper, &c.

TREASURER OF THE DISTRICT.

By 59 *G.* 3. *c.* 7. § 18. The justices in general quarter sessions are to appoint a proper person (resident within the district) to be treasurer, who shall give such security as shall be approved of by the justices, for the true and faithful execution of the trust reposed in him; and he is thereby required to pay so much of the money in his hands to such persons as the justices at their general quarter sessions, or the major part of them, shall direct, reserving £4 per cent. for his own use. The treasurer is also required to keep books of entries of sums received and paid by him, and deliver in a true and exact account upon oath, which oath any one justice may administer at their respective general quarter sessions, of all monies received and paid by him, distinguishing the uses to which the same have been applied, to the justices at every general quarter sessions for the district; and shall lay before such justices the proper vouchers for the same, and transmit once a year a certified copy thereof, on oath, to the governor, to be laid before the parliament, and the discharge of the justices shall be a good acquittance. The treasurer may be continued or removed at pleasure by such justices. sec. 20.

By the 56 *G.* 3. *c.* 32. § 5. The district treasurer is authorised to retain £3 per cent. upon all militia fines, &c. collected and transmitted to the receiver general; and if not transmitted within

three months after collection, such treasurer shall not be allowed such per centage.

By the 56 *G.* 3. *c.* 36. § 15. The several sums thereby granted to the several districts for common schools throughout the province, shall be paid to the treasurer, who is to pay the teachers their salaries on the certificate of the trustees.

By 60 *G.* 3. *c.* 7. § 6. Any balance remaining in the hands of the treasurer, shall be paid over to the receiver general for the public uses of the province: And by the 2 *G.* 4. *c.* 24. the treasurer may retain 3 per cent. upon all school monies passing thro' his hands, and be allowed the same by the inspector general on settlement of account, provided that proper vouchers are produced for payment of the monies expended.

By the general assessment act, 59 *G.* 3. *c.* 7. § 14. He is to keep an account for every parish, &c. within his district, and charge or credit the same with the rates and taxes payable or paid in respect thereof each year, and produce them for inspection each year at the sessions; and the same to be kept open for public inspection between the hours ten of and three, on every 1st and 3d Monday in each month, receiving for every search 1*s.* 3*d.* and no more. And by the highway act, 59 *G.* 3. *c.* 8. § 4. the treasurer is directed to receive the rates by this act imposed; and by sec. 7. to charge or credit each lot for the amount imposed as well by this act, as by the last mentioned act, and produce the books to the justices for public inspection, charging only one fee for inspection of both heads of rates at the same time. By sec. 8. The collectors to pay the monies received by them under this act to the treasurer: And by the 4 *G.* 4. *c.* 10. § 13. the treasurer is directed to pay to the order of the magistrates in special session in March, or any other special sessions, the monies collected by the rate of $\frac{1}{8}$ of a penny per acre, to be laid out by the said justices, by contract or otherwise, to the best advantage on the highways where the land lies from which said rate was collected.

By the 6 *G.* 4. *c.* 6. § 6. the treasurer of the district is required to report to the sessions all lands upon which the assessments shall be eight years in arrear, after the 1st July, 1828, (extended by the 9 *G.* 4. *c.* 4. § 9. to the quarter sessions next after the 1st of July, 1829,) and such reports to be made annually. By sec. 9. Lands liable for sale for arrears, are to be advertised by the treasurer in the Upper Canada Gazette, and in some newspaper of the district within one month after rendering his account: and by sec. 19. the owner may, within twelve calendar months, resume the land sold, upon re-payment to the treasurer of the amount levied by sale and the expense, with 20 per cent. in addition. Sec. 21. Treasurer neglecting to make returns required by this act, shall, on convic-

tion at the assizes, forfeit his office; and the justices shall appoint another according to law; and upon the neglect of the justices the governor may appoint one during pleasure. Sec. 24. The treasurer shall be entitled to receive, in account with the district, £5 for every account furnished under this act. Sec. 27. The treasurer is bound to give to any person paying his assessment, a detailed receipt for the same; and by 9 *G.* 4. *c.* 3. and for assessment paid on lands in another district, upon payment of five per cent. on the rate, as a compensation, for which he shall keep a separate account, to be verified upon oath and transmitted to the treasurer of the district where the lands lie, annually, on the first day of July: and the treasurer receiving assessments from treasurers of other districts, is to credit the respective lots, and transmit receipts to the treasurers forwarding the money. By sec. 6. After the 1st of July, 1829, treasurers are not to receive taxes upon lands in other districts, if they have been in arrear more than six years; in such case, the assessments must be paid in the district where the lands lie: and by sec. 7. no partial payment shall be received, when more than eight years assessments are due. Sec. 8. Imposes a penalty of £50 upon the treasurer for neglect of duty under this act, to be recovered before the general quarter sessions, upon the oath of one or more witnesses; one moiety to be paid to the informer and the other to the funds of the district; and justices in general quarter sessions next after the 1st of July, annually, are required to examine the accounts required by this act, and to ascertain whether the same have been transmitted, together with the monies, to the treasurer of the district interested therein.

By 8 *G.* 4. *c.* 4. § 1. Justices of the peace are required to publish an annual account of the receipts and expenditures of the district funds: and by sec. 2. no treasurer shall be chairman of the quarter sessions.

TREES.

By the 43 *Eliz. c.* 1. § 7. Every person who shall rob any orchard or garden; or break or cut any hedge, pales, rails or fence; or dig or pull up, or take up any fruit tree or trees, in any orchard, garden or elsewhere, to the intent to take and carry the same away; or shall cut or spoil any woods, or underwoods, poles or trees standing, (the same not being felony by the laws of the realm,) every such person, his procurers and receivers, knowing the same, being thereof convicted by confession, or oath of one witness before one justice, (or mayor,) shall give to the party such recompence and satisfaction for damages, and within such time as the said justice shall appoint, and the same to be only for the *first* fault:

and if such offender shall be thought by the justice not able, or do not make such recompence, then he shall commit him to the constable where the offence shall be committed, or the party apprehended to be whipped. And for every such offence, the person so committed shall receive the said punishment of whipping. And if the constable shall not by himself, or some other, execute upon the offender the said punishment, the justice may commit him to the common gaol till he comply. sec. 2.

(The same not being felony by the laws of this realm,) the distinction in such case seems to be this:—If they be any way annexed to the freehold, as trees growing, or apples growing upon the trees, then the taking and carrying them away is not felony, but only a trespass, for a man cannot steal a part of the freehold; but if they be severed from the freehold, as wood cut, or apples gathered from the trees, then the taking of them is not a trespass only, but a *felony.*

By the 22 & 23 *C.* 2. *c.* 7. If any person shall, in the night time, maliciously, unlawfully and willingly destroy any plantation of trees, or throw down any enclosures, he shall forfeit to the party grieved, treble damages. Sec. 5. And three justices may inquire thereof in six months, as well by a jury as by examination of witnesses on oath, or by any lawful ways, which to them shall seem meet. § 6. 7.

By the 1 *G. st.* 2. *c.* 48. § 2.; and 6 *G. c.* 16. If any person shall, in a riotous, open, tumultuous, *or* in a secret manner, forcibly, wrongfully and maliciously, and without the consent of the owner or person in care thereof, cut down, destroy, break, bark, throw down, burn, take, deface, spoil, or carry away any wood, or springs of wood, underwood or coppice woods, or break open, throw down, level or destroy any hedges, gates, posts, stiles, railing, walls, fences, dikes, ditches, banks or other enclosures thereof, two justices, or the justices in sessions, on complaint made by the owner, may cause the offender to be apprehended, and hear and determine the offence; and on conviction, shall commit the offender to the house of correction to hard labor for three months; and where there is no house of correction, then to the prison for four months; and shall order such offender to be publicly whipped by the master of such house of correction once a month, during such three months: and where there is no house of correction, the said justices shall order him to be whipped by the common hangman once a month, during the four months: and by sec. 3. before he shall be discharged, he shall find sureties for his good behaviour for two years. By sec. 4. And if any person shall maliciously set on fire, or burn or cause to be burnt, any wood, underwood or coppice, or any part thereof, he shall be guilty of felony.

By the 9 *G. c.* 22. commonly called the black act—if any person shall unlawfully and maliciously cut down, or otherwise de-

stroy any trees planted in any *avenue*, or growing in any *garden*, orchard or plantation, for ornament, shelter or profit; or set fire to any stack of wood; or forcibly rescue any person in custody for any the said offences; or by promise or reward procure any to join him therein, he shall be guilty of felony, without benefit of clergy.

By the 4 *G.* 3 *c.* 31. For the better preventing the destruction of timber trees, and other trees, under-woods and covert, in forests and chases; it shall be lawful for every surveyor of his Majesty's woods, and his lawful deputy, and for the officers and keepers of any forest or chase (besides the penalties for destroying the trees or underwoods) to seize and take away for his own use, any saw, axe, hatchet, bill-hook or other instrument, used by any person whom they shall find unlawfully stocking up, sawing, cutting down, topping, lopping or destroying any timber tree, or other tree, under-wood or covert within such forest or chase.

By the 6 *G.* 3. *c.* 36. Every person who shall, in the *night time*, lop, top, cut down, break, throw down, bark, burn or otherwise spoil or destroy, or carry away any oak, beech, ash, elm, fir, chesnut or asp timber tree, or other tree, standing for timber, or likely to become timber, without the consent of the owner thereof; or shall, in the night-time, pluck up, dig up, break, spoil or destroy, or carry away, any root, shrub or plant, roots, shrubs or plants, of the value of 5*s.* and which shall be growing and being in the garden ground, nursery ground or other enclosed ground, of any person, or shall be aiding or assisting therein; or shall buy or receive such root, shrub or plant, roots, shrubs or plants of the value aforesaid, knowing the same to be stolen, shall be guilty of felony and transported for seven years.

By the 6 *G.* 3. *c.* 48. Every person who shall wilfully cut or break down, bark, burn, pluck up, lop, top, crop, or otherwise deface, damage, spoil or destroy, or carry away any *timber* tree or trees, or trees likely to become timber, or any part thereof; or the lops or tops thereof, without the consent of the owner, (or in any of his Majesty's forests, or chases, without the consent of the surveyor or his deputy, or persons entrusted with the care thereof,) and shall be thereof convicted, on the oath of one witness, before one justice, shall, for the first offence, forfeit, not exceeding £20, together with the charges previous to and attending such conviction, to be ascertained by such justice; and on non-payment thereof, be committed by such justice to the common gaol, for any time not exceeding twelve months, nor less than six months; or until the penalty and charges shall be paid: for the second offence to forfeit, not exceeding £30, together with charges as aforesaid; on non-payment, to be committed as aforesaid, for any

time not exceeding eighteen months, nor less than twelve; or until the penalty and charges shall be paid: and if any person shall be guilty of a like offence a third time, and shall be thereof convicted *in like manner*, he shall be deemed guilty of felony, and the court before whom he shall be tried, shall have authority to transport him for seven years. And all oak, beech, chesnut, walnut, ash, elm, cedar, fir, asp, lime, sycamore, and birch trees, (and also poplar, alder, larch, maple, and hornbeam, by the 13 *G.* 3. *c.* 33.) shall be deemed timber trees within the meaning of this act.

And every person who shall pluck up, spoil or destroy, or take, carry away, any root, shrub or plant, roots, shrubs or plants, out of the fields, nurseries, gardens or garden grounds, or other cultivated lands of any person, without the consent of the owner, and shall be thereof convicted, upon the oath of one witness, before one justice, shall, for the first offence, forfeit not exceeding 40 shillings, together with the charges previous to and attending such conviction, to be ascertained by such justice; and if not immediately paid, the said justice shall commit him to the house of correction for one month, to be kept to hard labor, and once whipped there: for the second offence, shall forfeit not exceeding £5, together with the charges as aforesaid; if not paid immediately, then to be committed to the house of correction for three months, to be kept to hard labor, and whipped there once in every of the said months: and if any person shall a third time commit the like offence, and shall be thereof convicted, he shall be deemed guilty of felony; and the court before whom he shall be tried, shall have authority to transport him for seven years.

And every person who shall go into the woods, underwoods, or wood grounds, of any of his Majesty's subjects, not being the lawful owner thereof, and shall there cut, lop, top or spoil, split down, or damage, or otherwise destroy any kind of wood, or underwood, poles, sticks of wood, green stubs, or young trees, or carry or convey the same away, (or shall by night or day cut down, destroy, take, carry or convey away, any hollies, thorns, or quicksets, growing or being in any of his Majesty's forests or chases, or within the woods or wood grounds of any of his Majesty's subjects, 9 *G.* 3. *c.* 41.) or shall have in his custody any kind of wood, underwood, poles, sticks of wood, green stubs or young trees, (or any such hollies, thorns or quicksets as aforesaid, 9 *G.* 3. *c.* 41.) and shall not give satisfactory account how he came by the same, and shall be thereof convicted before one justice, on the oath of one witness, shall, for the first offence, forfeit, not exceeding 40*s.* together with the charges previous to and attending such conviction, to be ascertained by such justice; and if not paid immediately, the said justice shall

commit him to the house of correction for one month, to be kept to hard labor, and once whipped there: for the second offence, shall forfeit, not exceeding £5, together with the charges as aforesaid; if not paid immediately, then to be committed to the house of correction for three months, to be kept to hard labor, and whipped there once in every of the said months: and if any person shall commit any of the offences aforesaid, a third time, he shall, being duly convicted thereof according to law, be deemed an incorrigible rogue, and punished as such, (that is, he may, by the 17 *G.* 2. *c.* 5. § 9. be committed by the sessions to the house of correction for any time, not exceeding two years, nor less than six months, to be kept to hard labor, and whipped in such manner and at such time and places as they shall think fit.—See post title "*Vagrants.*")

And his Majesty's justices of the peace of the respective places where any of the said offences shall be committed, shall put this act in execution. The said forfeitures to be distributed, half to the informer, and half to the person aggrieved.

And if any person shall hinder or attempt to prevent the seizing or securing any person employed in carrying away any such timber, or other tress, he shall forfeit £10. to him who shall convict such offender; if not paid immediately on conviction, the justice before whom he shall be convicted, shall commit him to the house of correction, to hard labor, not exceeding six months.

The conviction to be written on parchment or paper, in the following form, or to the like effect:

—— District, } Be it remembered, that on the —— day of
to wit. } —— in the year —— A. B. was upon the complaint of C. D. convicted before —— of the justices of the peace for —— in pursuance of an act passed in the sixth year [or if the prosecution is on the 9 *G.* 3. *c.* 41. then say in the ninth year] of his Majesty King George the third, for —— (as the case shall be) Given under —— hand and seal, the day and year above written.

Which conviction shall be certified tothe next sessions, there to be filed amongst the records. And the same shall not be quashed for any want of form, nor be removed by *certiorari.* See also post title, "Wood."

Commitment for Destroying Trees; on the 1 *G. Stat.* 2. *c.* 48. *and* 6 *G. c.* 16. (Burn.)

—— District, } To the constable of —— in the said district,
to wit. } and to the keeper of the house of correction at —— in the said district. Forasmuch as A. O. of —— yeoman, is this day duly convicted before us, —— Esquires, two of his

Majesty's justices of the peace for the said district, for that he the said A. O. on the —— day of —— now last past, at —— aforesaid, in the district aforesaid, did wrongfully and maliciously cut down two ash trees, *(or as the case shall be)* the property of A. J. of —— yeoman, without the consent of him, the said A. J. the owner thereof, or of any other person chiefly entrusted with the care and custody thereof. We do, therefore, hereby command you, the said constable, to convey the said A. O. to the said house of correction at —— aforesaid, in the district aforesaid, and to deliver him to the keeper thereof, together with this precept.—And we do, also, hereby require you, the said keeper of the said house of correction, to receive him, the said A. O. into your custody in the said house of correction, and him there to keep to hard labour for the space of three months now next ensuing, and until he shall find sufficient sureties for his good behaviour for two years. And we do, likewise, hereby order you, the said keeper of the said house of correction, publicly to whip him, the said A. O. once in every month during the said three months in the market town of —— in the said district, on the market day there, between the hours of eleven and two. And for so doing, this shall be your sufficient warrant. Given under our hands and seals at —— in the said district, —— the —— day of —— in the year ——.

TURNIPS.

By 23 *G.* 3. *c.* 26. § 13. 14. If any person shall steal and take away, or maliciously pull up and destroy any turnips, growing or being in any grounds belonging to any person, and be convicted thereof, within 30 days, by confession, or oath of one witness, before one justice, he shall, for the first offence, pay to the owner such damages, and within such time, as the justice shall appoint; and shall also pay down, upon conviction, to the overseers for the use of the poor, such sum, not exceeding 10*s.* as the justice shall think fit; and if he shall not make such recompence and payment, the justice may either commit him to the house of correction, for any time, not exceeding one month, or order him to be whipped by the constable; and being convicted of a second offence, he shall be committed to the house of correction for 3 months.

TURNPIKES.

By *stat.* 13 *G.* 3. *c.* 84. § 42. If any person or persons shall wilfully or maliciously pull down, or otherwise destroy any turnpike gate, or any post, rail, wall, chain, bar or other fence, belonging

to any turnpike gate, or any chain, bar or fence, set up to prevent passengers from passing without paying toll, or any house for the use of such turnpike, or any crane, machine or engine, erected on any turnpike road, for weighing waggons, carts or carriages, or shall rescue any offender, he or they shall be guilty of felony, and liable to transportation for seven years, or shall be committed to prison for any time, not exceeding 3 years.

USURY.

USURY is the offence of extorting an unreasonable rate of interest for the loan of money, beyond what is allowed by law, and from what is said in the books, it appears that usury was originally considered an offence at common law. 2 *Roll* 800. 3. *Inst.* 151. 152. 6 *Com. Dig. Usury (A.) Anon Hardr.* 410. The rate of legal interest in this province, is 6 per cent. by the 51 *G.* 3. *c.* 9. § 6. Which also enacts, that all bonds, contracts and assurances whatsoever, whereby a greater rate of interest shall be reserved and taken, shall be utterly void; and every person who shall either directly or indirectly take, accept and receive, a higher interest, shall forfeit and lose for every such offence, treble of the value of the monies, wares, merchandizes and other things lent or bargained for, to be recovered by action of debt, in the court of King's Bench in this province; a moiety of such forfeiture to the use of the province, and the other moiety to the informer.

VAGRANTS.

1. *Idle and Disorderly Persons.*

BY the 7 *J. c.* 4. Idle and disorderly persons shall be sent to the house of correction; and by the 17 *G.* 2. *c.* 5. Idle and disorderly persons are thus described: 1. All persons who threaten to run away, and leave their wives or children to the parish. 2. All persons who shall unlawfully return to the parish or place from whence they have been legally removed, by order of two justices, without bringing a certificate from the parish or place whereunto they belong. 3. All persons, who not having wherewith to maintain themselves, live idle without employment, and refuse to work for the usual and common wages given to other labourers in the like work in the parishes or places where they are. 4. All persons going about from door to door, or placing themselves in streets, highways or passages, to beg or gather alms in the parishes or places where they dwell—all these shall be deemed idle and disorderly persons. And it shall be lawful for one justice to commit such offenders (be-

ing thereof convicted before him, by his own view, or confession, or oath of one witness) to the house of correction, to be kept to hard labour, not exceeding one month. And any person may apprehend and carry before a justice, any such persons going about from door to door, or placing themselves in streets, highways or passages, to beg alms in the parishes or places where they dwell, and if they shall resist or escape from the person apprehending them, they shall be punished as rogues and vagabonds.

2. *Rogues and Vagabonds.*

By 17 *G.* 2. *c.* 5. The following persons shall be deemed rogues and vagabonds: 1. All persons going about as patent gatherers, or gatherers of alms, under pretences of loss by fire, or other casualty. 2. Persons going about as collectors for prisons, gaols or hospitals. 3. Fencers. 4. Bearwards. 5. Common players, not authorised by law. 6. Minstrels. 7. Jugglers. 8. Gypsies. 9. Or pretending to have skill in physiognomy, palmestry, or like crafty science, or to tell fortunes. 10. Or using any subtile craft to deceive and impose on any of his Majesty's subjects. 11. Or playing or betting at any unlawful games or plays. 12. All persons who run away and leave their wives or children chargeable to any parish or place. 13. All petty chapmen and pedlers wandering abroad, not being duly licensed, or otherwise authorised by law. 14. All persons wandering abroad and lodging in ale-houses, barns, out-houses, or in the open air, not giving a good account of themselves. 15. All persons wandering abroad and begging, pretending to be soldiers, mariners, or seafaring men. 16. Or pretending to go to work in harvest. 17. And all other persons wandering abroad and begging, shall be deemed rogues and vagabonds.

3. *Incorrigible Rogues are thus described.*

1. All end-gatherers offending against the statute of the 13 *G.* being convicted of such offence. 2. All persons apprehended as rogues and vagabonds, and escaping from the persons who apprehended them. 3. All rogues or vagabonds who shall break or escape out of any house of correction, before the expiration of the term for which they were committed or ordered to be confined by this act. 4. All persons who, after having been punished as rogues and vagabonds, and discharged, shall again commit any of the said offences—all these shall be deemed incorrigible rogues. Sec. 4.

4. *Apprehending Rogues.*

If any person shall be found offending against this act, the constable shall apprehend him, and convey, or cause him to be conveyed, to a justice of the peace. 17 *G.* 2. *c.* 5. § 5.—under the penalty of 10s. for such refusal. *Ib.* And any other person may apprehend and carry him to the constable, or to a justice.

5. *Punishment.*

And such justice shall order such person so apprehended to be publicly whipped by the constable, or shall order him to be sent to the house of correction, (or common gaol. 27 *G.* 3. *c.* 11.) till the next sessions, or for any less time, as such justice shall think proper. 17 *G.* 2. *c.* 5. § 7. And if committed till the sessions, and the justices at such sessions shall, on examination of the case, adjudge such person to be a rogue or vagabond, or an incorrigible rogue, they may order such rogue or vagabond to be detained in the house of correction for any further time, not exceeding six months; and such incorrigible rogue, for any further time not exceeding two years, nor less than six months, and during his confinement to be whipped in such a manner, and at such times and places, as they shall think fit. And if such incorrigible rogue, so ordered by the sessions to be detained in the house of correction, shall break out, or make his escape, or shall offend again in like manner, he shall be guilty of felony, and be transported for seven years. 17 *G.* 2. *c.* 5. § 7. 8. 9. And by the 13 & 14 *C.* 2. *c.* 12. the justices in sessions may transport such rogues, vagabonds, and sturdy beggars, as shall be duly convicted and adjudged to be incorrigible. Sec. 23.

6. *Penalty on lodging Vagrants.*

If any person shall knowingly permit any rogue, vagabond, or incorrigible rogue, to lodge or take shelter in his house, barn, or other out-house or building, and shall not apprehend and carry him before a justice, or give notice to the constable to do so, he shall forfeit not exceeding 40s. nor less than 10s., upon conviction before one justice—half to the informer, and half to the poor, by distress and sale. 17 *G.* 2. *c.* 5. § 23.

7. *General penalty for hindering the execution of the Vagrant Act.*

If any constable, or other officer, or governor of any house of correction, shall be defective in his duty; or if any person shall

hinder the execution of this act, or shall rescue any person apprehended, or aid therein, he shall, on conviction before one justice, forfeit not exceeding £5, nor less than 10s., and in default, be committed to the house of correction, with hard labour, not exceeding two months. 17 *G.* 2. *c.* 5. § 22.

WARRANT.

A WARRANT is a precept under the hand and seal of a magistrate or other public functionary, directed to some officer, either to arrest an offender or to seize or distrain upon his goods, to be dealt with respectively in either case, according to law. A warrant can only be executed by some one or more of the persons to whom it is directed, unless, indeed, it be directed to the sheriff, who may either by parol or by precept in writing, authorise an officer, sworn and known, to execute it, but the sheriff cannot empower any other person without a precept in writing. 1 *Haw. c.* 60. § 11. If the warrant direct the officer to cause the party complained of to come before some justice of the peace, to find surety for keeping the peace, the officer, before he makes any arrest, ought first to require the party to go with him, and find sureties according to the purport of the warrant, and if he refuses, the officer may carry him by force before the magistrate, or confine him in some gaol till he can be conveniently brought before the magistrate. *Ibid.* If the warrant specially direct that the party shall be brought before the justice who issued it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any justice, the officer has then the election to bring him before what justice he pleases, and may carry him to prison for refusing to obey the warrant. *Ibid.*

In what cases, and in what form a warrant may be granted for the apprehension of a party, see *ante* "Arrest," p. 34; "Justices of the Peace," p. 266.

For what cause, and in what form a warrant of commitment may be issued, see "Commitment," p. 113.

And see further, "Distress ' Search Warrant," and "Habeas Corpus."

WEIGHTS AND MEASURES.

BY 4 *G.* 4. *c.* 16. The secretary shall furnish each district with a true standard. Sec. 4. Magistrates in quarter sessions shall appoint one inspector to take charge of all such weights and measures, whose duty shall be, at all proper times when application is made to him, carefully to examine and compare all weights and

measures presented to him with the standard in his charge, and when found true, to stamp the same (if a measure) as near the two ends or top and bottom, as may be, G. W. R. for which he shall receive for every piece so marked, 4d. and no more. Sec. 5. Inspectors may be removed and others appointed by the magistrates, as often as they shall think proper; and every inspector before entering upon his office shall take the following oath.

"I, A. B. do sincerely promise and swear that I will carefully preserve all such weights and measures as shall be given me in charge as a standard for the district of —— and that I will honestly and faithfully discharge the duties of inspector of weights and measures for the district of —— according to the true intent and meaning of an act of parliament of this Province, passed in the fourth year of the reign of King George the fourth, according to the best of my abilities and knowledge, and deliver them over to my successor in office, duly appointed for that purpose, when required so to do. So help me God."

Sec. 6. And all store-keepers, shop-keepers, millers, distillers, butchers, bakers, hucksters, and other trading persons, who shall have in his possession any weights or measures, whereby he sells or buys any articles, other than such as have been examined and stamped as aforesaid, shall, upon being convicted before any one justice, on the oath of one witness, forfeit £2. for every offence, to be levied, with reasonable costs, by distress and sale, and in default the offender shall be committed to the common gaol for a term not exceeding one month. Sec. 7. One moiety of the penalty shall be paid to the informer and the other to the province.

Information for having Weights &c. contrary to the Statute.

—— to wit. The information and complaint of A. B. of —— being a person duly appointed and sworn to examine the weights and measures within the district of —— preferred at a petty sessions held for the said district, at —— in the said district, before us J. C. and S. P. esquires, (or before one justice) justices of the peace for the said district, whose names are hereunder written, this —— day of —— in the year of our Lord 18—— who saith, that on the —— day of —— one C. D. of —— grocer and shop-keeper, (he the said C. D. being a person who sells by retail and weight, goods, wares and merchandizes,) at the dwelling-house and shop of him the said C. D. situate at —— in the said district, then and there had in his possession, in his said dwelling-house and shop, certain weights and measures, to wit, [*here describe them*] whereby he the said C. D. sold and bought, and which were not duly marked and stamped, as by law is required, contrary to the

form of the statute in that case made and provided, whereby he the said C. D. hath incurred the forfeiture of £2. imposed by the said act of parliament, for the said offence, and therefore he prayeth that he may be summoned according to law.

Exhibited before us, the ——
day of —— 18—.

N. B.—The above information should not be upon oath. The party informing being interested in the penalty is not therefore a competent witness; but in support of the conviction one other credible witness, not interested, should be called and sworn. Proof of either buying or selling will be sufficient.

Summons thereon.

To C. D. of ——

—— to wit. Whereas A. B. of —— in the said district, being a person duly appointed and sworn to examine the weights and measures within the district of —— hath this day preferred an information against you, for having on the —— day of —— at your dwelling-house and shop, situate at —— in the said district, in your possession certain weights and measures, to wit, [*here describe them*] whereby you sold and bought, and which were not duly marked and stamped as by law is required, contrary to the form of the statute in that case made and provided, whereby you the said C. D. have incurred the forfeiture of £2. imposed by the said act for the said offence; these are therefore to require you personally to appear before us, or such other of his Majesty's justices of the peace for the —— district, as shall be present at the petty sessions to be holden at —— in the said district, on —— the —— day of —— at —— o'clock in the forenoon of the same day, then and there to answer the premises. Herein fail you not. Given under our hands and seals this —— day of ——

Conviction.

The conviction must be in the general form required by the 2 *W.* 4. *c.* 4. see title "Conviction,"—see the form *ante* p. 139.

See also titles "Distress Warrant," *ante* p. 150, and "Commitment," *ante* p. 119.

WIFE.

THE Wife of a man (in legal language a *feme covert)* is so much favored in law on account of the matrimonial subjection due from her to her husband, that if she commit theft, or even a burglary, by his coercion, or merely in his company, when the law presumes a coercion, she is held to be exempt from punishment; being con-

sidered as acting in either of these instances by compulsion, and not of her own free will. This doctrine, Sir Wm. Blackstone observes, is at least a thousand years old, being to be found among the laws of King Ina, the West Saxon. 4 *Bl. Com.* 28. The presumption of coercion, however, does not amount to more than a *prima facie* presumption of law, and therefore, if it clearly appear in evidence that the wife was not drawn to the offence by the husband, but that she was in fact the principal instigator of it, or was acting herself as a free and independent agent, she is in this case guilty as well as the husband. If the wife also procure her husband to commit the offence, she is then an accessory before the fact, in the same manner as if she had been sole. 1 *Hale* 516. 2 *Haw. c.* 29. § 34.

There are also some exceptions as to the impunity of the wife in committing crimes, even though acting under the coercion of her husband, by reason of the heinousness of the offence committed. Thus, in treason, no plea of *coverture* shall excuse the wife. 4 *Bl. Com.* 29. In murder also, and offences of the like description which are prohibited by the law of nature, and are *mala in se*, the wife is held a responsible agent notwithstanding the coercion of her husband.

In inferior misdemeanor, there is also another exception as to the irresponsibility of the wife, for she may be indicted and punished *with* her husband for keeping a *brothel;* this being considered to be an offence touching the domestic economy of the *house*, in which the wife has necessarily a principal share, and of that description, moreover, which the law presumes to be generally conducted by the intrigues of the female sex. 1 *Haw. c.* 1. sec. 12. But a prosecution for a *conspiracy* is not maintainable against husband and wife only, because they are esteemed but one person in law; and in order to support an indictment for conspiracy there must be a conspiring between *two* persons at the least. 1 *Haw. c.* 72. sec. 8. In all cases, however, where the wife offends *alone*, without the company or coercion of her husband, she is then as much responsible for her offence as any *feme sole*. 4 *Bl. Com.* 29. And whenever she commits an offence in the absence of her husband, it will be no excuse that she committed it by his order. *R. v. Morris, R. & R.* 270. If a woman receives stolen goods into her house, knowing them to be so, or lock them up in her chest or chamber, without the knowledge of her husband, she alone may be indicted. But if the ignorance of the husband is not satisfactorily proved, as by his continued absence from home, or by other circumstances, the law will, in most cases, impute the receiving to him, and not to the wife. *Dalt. c.* 157. *p.* 353. Although the husband may be indicted as an accessory for receiving the wife, knowing her to

have committed a felony, yet the wife shall not be deemed an accessory for receiving her husband. Neither is the wife affected by receiving jointly with her husband a *third person*, who has committed felony; except in case of treason. But if she alone, in the absence of her husband, and without his knowledge, knowingly receive a felon, she may then be indicted as an accessory, and not the husband. 1 *Hale*, 47. 621. 1 *Haw. c.* 1. § 10. A wife cannot be convicted of felony in stealing her husband's goods. But if the wife take the goods of her husband and deliver them to B. who elopes with her and the goods, as her *adulterer*, this will then be felony in B. *Dalt. c.* 10. *Pl.* 268. *R. v. Tolfree, Ry. & M.* 243. Husband and wife being but one person in law, and their interest absolutely the same, they cannot give evidence for the benefit of each other, *Gilb. Ev.* 119.; not even by the consent of the other party, *Cas. Temp. Hard.* 264.; neither can they be witnesses against each other, 1 *Phil.* 84.; except in cases of personal injury to the wife, when she is on the principal of humanity and justice, as well as necessity, admitted as a witness against her husband; as where the husband is indicted for shooting at her, or attempting to poison her, or for assaulting and beating her. 1 *Str.* 633. *B. N. P.* 287. *R. v. Whitehouse.* 2 *Russ.* 606. *R. v. Jagger, Ib.* But in these cases, the wife ought only to be admitted to prove facts, which cannot be proved by any other witness. *Per. Holroyd. J.* 2. *Russ.* 606. So her dying declarations are admissible against him, in the case of murder. *R. v. Woodcock.* 1 *Leach.* 500. *R. v. John, Ib.* 504. *n. (a.)* So the wife is always permitted to swear the peace against her husband. *Ib.* Finally, it seems to be allowed that in all cases where a wife is a competent witness *against* her husband, she is also an admissible witness for him. *R. v. Perry, cit. in. R. v. Serjeant.* 1 *Ry. & M.* 354. And the same rules of necessity which admit the wife to give evidence against her husband, will also permit the husband to be a witness against the wife, in cases of personal injury,—such as murder, assault, and surety of the peace where any violence is threatened by the wife, against the husband. There is a foolish notion prevalent with the lower orders in England, that if a man sell his wife with a halter round her neck in *market overt*, this operates as a divorce, "a vinculo matrimonii," and that both buyer and seller may lawfully make such a bargain. Such a brutal act is, however, grossly illegal, and indictable at common law, as a misdemeanor.

Wills.—See Register Office.

WINES, &c.

By 40 *G.* 3. *c.* 4. Entitled "an act for the summary conviction of persons selling spirituous liquors by retail, without license," it is enacted that if any person shall directly or indirectly sell any wine, brandy, rum, or other spirituous liquor by retail, without a license, such person having been summoned to appear before any three or more justices, and lawfully convicted by the oath of one or more witnesses, shall forfeit £20, to be levied with costs of suit, by distress and sale, one half to the informer and the other to the province; and in default of distress, committed to the gaol of the district three calendar months. Sec. 2. Upon information upon oath, any one justice may issue his warrant against any offender not usually resident in the place, and compel him to enter into recognizance with one or more sureties to appear at the hearing; and in default of bail, commit him to gaol until complaint disposed of. Sec. 3. No shop-keeper, duly licensed, shall sell less than one quart, under the penalty of £20, to be levied as aforesaid. Sec. 4. Information to be laid within six calendar months.

Information for selling Wine, &c. without a License. (Archbold.)
Penalty, £20. 40 *G.* 3. *c.* 4.

Commencement as in the form ante. p. 239.] informeth us, that C. D. late of the township of ——, in the district aforesaid, yeoman, within the space of six calendar months now last past, to wit. on the —— day of ——, in the year aforesaid, at the township aforesaid, in the district aforesaid, did sell wine, [*brandy, rum, or other spirituous liquor,*] to wit. one quart of wine, by retail, without being duly licensed so to do, contrary to the form," &c. [as *ante. p.* 239. *to the end.*]

Summons,

Same as the form ante. p. 438.

Warrant against the Defendant, if not usually resident in the place.

Home District, } To the constable of ——, in the said district:
to wit. } Whereas C. D. of ——, hath this day been charged before me, J. P. one of his Majesty's justices of the peace for the district aforesaid; for that he, the said C. D. on the —— day of ——, &c. [*here state the matter as laid in the information.*] These are therefore to command you, in his Majesty's name, forthwith to apprehend and bring him before me, or some other of his Majesty's justices of the peace for the said district, the body of the

said A. B. to be dealt with according to law.—Herein fail you not. Given under my hand and seal, the —— day of ——, in the year of our Lord ——. J. P.

N. B.—The act requires, in case a warrant is issued, that an information upon oath should be previously taken. The justice should therefore, before granting the warrant, require the informer to produce his witness, whose deposition should be taken in writing and sworn to. This deposition should also state that the defendant is not usually resident in the district.

Recognizance on the above Information.

The form of the recognizance will be the same as *ante.* p. 384.

The condition of this recognizance is such, that if the above bounden C. D. shall and do personally appear at the hearing of the said complaint, on ——, the —— day of —— next, at the township of ——, in the said district, at the hour of —— in the forenoon of the same day, before such of his Majesty's justices of the peace as shall be then and there assembled in petty sessions, and then and there answer to the complaint charged against him in the said information, and not depart without leave, then this recognizance to be void, or else to remain in full force.

Commitment for want of Sureties.

Home District, } To the constable of —— in the said district, and
to wit. } to the keeper of the common gaol at Toronto, in the said district: Whereas C. D. late of —— stands charged by an information in writing, upon the oath of a credible witness, exhibited and sworn before me, J.P.Esq. one of his Majesty's justices of the peace for the said district, for that he, the said C. D. on the —— day of ——, &c. [*reciting the matter charged in the information.*] And whereas, the said C. D. not being usually a resident within this district, but commonly residing out of the same, is now required by me, the said justice, to enter into a recognizance with sufficient sureties, that is to say, himself in —— pounds, and each of his sureties in the sum of —— pounds for his appearance at the hearing of the said information, on the —— day of ——, at —— aforesaid, in the district aforesaid, before such of his Majesty's justices of the peace as shall be then and there assembled in petty sessions, pursuant to the statute in such case made and provided; but the said C. D. hath neglected and refused so to do: These are therefore to command you, the said constable, to take the said C. D. and him safely to convey to the common gaol at Toronto, aforesaid, with this precept: and I do hereby command you, the said keeper, to receive the said C. D. into the said common gaol, and him there safely keep until the —— day of —— next; when you, the said keeper, are hereby required to bring him, the said C. D. before the said justices, to answer the said complaint charged against him in the said information, at

——, in the said district, unless the said C. D. shall sooner enter into such recognizance as aforesaid. Given under my hand and seal, &c.

The conviction should be in the form required by the 2 *W.* 4. *c.* 4. See *ante.* p. 139. See also title "Distress Warrant," *ante.* p. 150. and "Commitment," *ante.* p. 119.

WITNESSES.

Witnesses may be compelled to give their evidence in criminal cases by recognizance or subpœna. If a witness examined before a justice, refuses to be bound over, the justice may commit him. 2 *Hale*, 284. And where a *married woman* refused to undertake to appear at the trial, or to find sureties for her appearance, the magistrate was held justified in committing her. 3 *M.* & *S.* 1.— But though a person may be committed for not entering into recognizance to prosecute and give evidence, yet the party shall not be committed for his inability to find a person to join in such recognizance; his own recognizance is all that can or ought to be required. *Arch. Com.* 12. *Toone*, 270. If the witness, after being served with a *subpœna*, neglect to appear, an application may be made to the court of king's bench, for an attachment against him. *R. v. Ring*, 8. *T. R.* 585. 1 *Star. Ev.* 119. A witness, whether bound over or subpœned, or attending voluntarily for the *bona-fide* purpose of giving evidence, is privileged from arrest *eundo, redeundo, et morando*; if no more than a necessary time is occupied by him upon either of those occasions. 1 *H. B.* 636. 2 *Bl.* 1113. In allowing witnesses time sufficient for these purposes, the courts are always disposed to be liberal. 1 *Phil. Ev.* 4. If a witness, under such circumstances, be arrested, the court out of which the *subpœna* issued, or the judge of the court in which the cause has been tried, will, upon application, order him to be discharged; but this privilege of a witness does not extend to arrests by his bail, for the purpose of surrendering him; for he is supposed to be in their custody even while he is attending as a witness. *Exp. Lyne.* 3. *Star. Rep.* 132.

By stat. 3 *W.* 4. *c.* 3. § 8. It is enacted, that when the attendance of any person in gaol or upon the limits, shall be required in court, at the assizes, the court shall and may in its discretion, order the sheriff, gaoler, or other person having the custody of such prisoner, to deliver him to the person named in such order to receive him, which person shall thereupon instantly convey such prisoner to the place where the court issuing such order shall be sitting, to receive and obey such further order as to the said court shall seem meet, provided that no prisoner for debt or damages be removed out of the district.

To dissuade, or endeavour to dissuade a witness from giving evidence against a person indicted, is an offence at common law, though the persuasion should not succeed, and for which the party may be indicted as for a misdemeanor. 1 *Haw. P. C. c.* 21. § 15. *R. v. Lawley*, 2 *Str.* 904.

Payment of the Expenses of Witness.

In civil cases, a witness is not bound to attend unless his reasonable expenses be previously tendered to him, but in criminal cases he is bound to attend unconditionally. 2 *Haw. c.* 46. § 173. But, several statutes enable the court to allow prosecutors and witnesses a remuneration for their expenses and loss of time, and in one particular instance entitle the witnesses to a tender of expenses.

By stat. 25 *G.* 2. *c.* 36. § 11. The court before whom any person hath been tried and *convicted* of any grand or petit larceny, or other felony, may, at the prayer of the prosecutor, and on consideration of his circumstances, order the treasurer of the county in which the offence shall have been committed, to pay him such sum as they shall judge reasonable, not exceeding the expenses he was put to in carrying on the prosecution, with a reasonable allowance for his time and trouble; and the clerk of assize or of the peace, shall forthwith make out such an order, and deliver the same to the prosecutor, on paying 1*s.*, and the treasurer shall pay the same on sight, and be allowed the same in his accounts.

By stat. 27 *G.* 2. *c.* 3. § 3. When any poor person shall appear on *recognizance* in court to give evidence in cases of grand or petit larceny, or other felony, the court may order the treasurer to pay him such sum as they shall think reasonable for his time, trouble and expenses; which order the proper officer shall make out for the fee of 6*d.* *And by stat.* 13 *G.* 3. *c.* 19. § 7. The court before whom any person hath been tried and convicted of any grand or petit larceny, or other felony; or before whom any person hath been tried and *acquitted* of any grand or petit larceny, or other felony; in case it shall appear to the said court that there was a reasonable ground of prosecution, and that the prosecutor had *bona fide* prosecuted, may order the treasurer to pay to such prosecutor such sum as they shall think reasonable, not exceeding the expenses he was *bona fide* put unto; making also, if he shall appear to be in poor circumstances, a reasonable allowance for his trouble and loss of time; which order the clerk of assize or clerk of the peace respectively, shall forthwith make out and deliver to him, on being paid for the same 1*s.* and no more; and the treasurer, upon sight of the order, shall forthwith pay the same.

For the forms of "Summons," "Warrant," and "Recognizance" of a witness, see title "Justice of the Peace," *ante.* p. 268. 269. 271.

Commitment of a Witness for refusing to enter into his own Recognizance to appear and give Evidence.

Home District. } To the keeper of the gaol at ——, in the said
to wit. } district:—Forasmuch as A. B. whose body is herewith sent you, hath admitted before me, J. P. Esq. one of his Majesty's justices of the peace for the said district, that [he was present when a certain felony and robbery was committed upon the person of A. B. on Friday last, at ——,] but hath refused to be examined upon oath respecting the said felony, and to enter into his recognizance now here required by me, the said justice, in the sum of —— to appear and give evidence upon a bill of indictment to be preferred at the next assizes and general gaol delivery for the said district, against C. D. who stands charged with the said felony; and the said A. B. being a material and necessary witness for the prosecution in such case: these are therefore to auauthorise and require you, the said keeper, to receive the said A. B. and him safely keep in your custody until he shall enter into such recognizance in due form of law—or be otherwise discharged in due course of law; and for so doing, this shall be your sufficient warrant. Given under my hand and seal, at ——, this —— day of ——, 183—. J. P.

Another Form. (Toone.)

—— District, } To the constable of —— and to the keeper
to wit. } of the common gaol at —— in the said district. Whereas, A. B. was this day charged before me, J. C. Esq. one of his Majesty's justices of the peace in and for the —— district, with having feloniously stolen —— the property of C. D. of —— yeoman, and upon the examination of the said A. B. one E. F. of —— in the said district, labourer, did give material evidence on oath, before me, the said justice, against the said A. B. touching the said felony; whereupon the said E. F. is required by me, the said justice, to become bound in a recognizance in the sum of £—— conditioned for his personal appearance at the next general quarter sessions, to be held in and for the said district, then and there to give evidence as he knoweth, on the part of our lord the King, against the said A. B. on his trial for the said felony; but inasmuch as the said E. F. hath obstinately and contemptuously refused to enter into such recognizance; these are, in his

Majesty's name, to command you, the said constable, forthwith to convey and deliver the said E. F. into the custody of the keeper of the common gaol aforesaid, together with the duplicate of this, my warrant; and also, to command you, the said keeper, to receive the said E. F. into your custody in the said common gaol, and him there safely to keep, until the next general quarter sessions, to be held in and for the said district, or until he shall enter into such recognizance as aforesaid. Given under my hand and seal, &c.

Form of an Indictment for dissuading a Witness to give Evidence.
(Chitty.)

Home District, } The jurors, &c. That on, &c. a certain writ of
to wit. } our lord the King, called a *subpœna ad testificandum*, had been and was duly issued and tested, by and in the names of C. D. of &c. at &c. the same day and year aforesaid, the said C. D. then and there being *custus rotulorum*, in and for the said district, which said writ was directed to E. F. and G. H. by which said writ our said lord the King commanded, &c. (recite the writ.)—And the jurors, &c. do further present that a copy of the said writ was on &c. at &c. duly served on the said J. K. who then and there had notice to appear and give evidence according to the exigency of such writ, and that the evidence of the said J. K. at the time of issuing the said writ, and from thence until and upon the said &c. therein mentioned, was material and necessary to have been given before the said grand jury, on the said bill of indictment so to be preferred against the said A. B. as aforesaid; and that at the sessions of the peace, holden by adjournment at ——— aforesaid, in and for the said district, on &c. aforesaid, such bill of indictment was preferred against the said A. B. to and before a certain grand jury, then and there duly assembled in that behalf. And the jurors, &c. do further present that A. B. late of &c. being an evil disposed person, and contriving and intending to obstruct and impede the due course of justice on &c. at &c. unlawfully and unjustly dissuaded, hindered, and prevented the said J. K. from appearing before the said justices at the said sessions of the peace, holden as aforesaid, to testify the truth and give evidence before the said grand jury, on the said bill of indictment so preferred against the said A. B. as aforesaid; (and the said A. B. in consequence thereof, did not so appear and give evidence according to the exigency of the said writ,) to the great obstruction, hindrance, and delay of public justice, in contempt &c. to the evil &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present that on the said &c. a

certain other writ of our said lord the King had duly issued, directed to the said E. F. and G. H. by which said last mentioned writ our said lord the King commanded the said E. F. and G. H. that, &c. *(recite the writ.)* And the jurors, &c. do further present that the evidence of the said J. K. at the time of issuing the said last mentioned writ, and from thence until and upon the said, &c. therein mentioned, was material and necessary to have been given before the said grand jury, in the said bill of indictment, so to be preferred against the said A. B. as aforesaid. And the jurors, &c. do further present that the said A. B. being an evil disposed person, &c. *(same as first count saying,* "endeavored to dissuade," &c. *and omitting the allegation between the brackets.)*

WOLVES.

By 11 *G.* 4 *c.* 17. Which also repeals a former act on this subject, 49 *G.* 3. It is enacted, that every person who shall kill a wolf or wolves, and shall take the heads thereof, with the ears on the same, before any one of his Majesty's justices of the peace in the district where the same shall have been killed, and shall make oath, or otherwise prove to the satisfaction of the said justice, that the same was or were killed within said district, or within 5 miles of an actual settlement in the said district, the said justice having first destroyed the head or heads, shall give to such person or persons a certificate of the fact having been proved to his satisfaction, and such certificate being presented to the treasurer of the district, shall authorise the person or persons presenting the same, to demand and receive from the treasurer, the sum of one pound for the head of every wolf so killed. § 3. The treasurer is to pay the same out of the district money in his hands, or if not sufficient, then out of the next monies received. § 4. But such bounties are not to be paid, until certain other district expenses are paid. § 5. When the district funds shall not be sufficient, such certificates shall be a lawful tender to the full amount, for any district rate or assessment, and shall be accepted by the collector accordingly. § 6. This act to continue for 4 years, and to the end of the next session of parliament.

N. B.—This act will expire with the session of parliament in 1835.

WOMEN.

By 18 *Eliz. c.* 7. If any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, he shall be guilty of felony, without benefit of clergy.

By 3 *Ed.* 1. *c.* 13. None shall take by force, any maiden within age, (that is, the age of 12 years, being the age of consent to marriage, 2 *Inst.* 182,) by her own consent or without; nor any

wife or maiden of full age, nor any other woman against her will, on pain of imprisonment for two years, and after fine at the King's will.

By 31 *H.* 6. *c.* 9. If any person take by force or otherwise, any woman sole, having any substance of lands, tenements or moveable goods, and enforce her before she be set at liberty, to bind herself to him by statute or obligation, such bond shall be void.

By 3 *H.* 7. *c.* 2. Whereas women, as well maidens as widows and wives, having substance, some in goods moveable and some in lands and tenements, and some being heirs apparent unto their ances' rs, for the lucre of such substances are oftentimes taken by mis-doers, contrary to their will, and after married to such mis-doers, or to other by their assent, or defiled; it is enacted, that what person that taketh any woman so against her will unlawfully, that is to say, maid, widow or wife, that such taking, procuring and abetting to the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, shall be guilty of felony; and that such mis-doers, takers and procurators, to the same, and receitors, knowing the said offence, shall be adjudged as principal felons. And by 39 *Eliz.* *c.* 9. Benefit of clergy is taken away from the principals, procurers and accessories before.

By 4 & 5 *P.* & *M.* *c.* 8. § 3. If any person, above the age of 14 years, shall unlawfully take or convey, or cause to be taken or conveyed, any maid or woman child, unmarried, being within the age of 16 years, out of the possession, and against the will of her father or mother, or guardian, he shall suffer two years imprisonment, or pay such fine as shall be assessed by the court, half to the King, and half to the parties grieved; and if any person shall so take away, or cause to be taken away, and *deflour* any such maid or woman child, or shall, against the will or knowledge of the father, or if he is dead, of the mother, having tuition of such child, *contract matrimony* with her, by letters, messages or otherwise, he shall be imprisoned for five years, or pay such fine as shall be assessed by the court, half to the King, and half to the parties grieved.

If a woman, quick with child, be condemned either for treason or felony, she may alledge her being with child, in order to get the execution respited, and thereupon, the sheriff shall be commanded to take her into a private room and to impanel a jury of matrons, to try and examine whether she be quick with child or not; and if they find her quick with child, the execution shall be respited till her delivery. But a woman cannot demand such respite of execution by reason of her being quick with child more than once. 2 *Haw.* 464.

WOOD.

By the 37 *H.* 8. *c.* 6. § 4. If any person shall maliciously burn, or cause to be burned, any heap of wood, prepared, cut and felled, for making of coals, billets, or talwood; or bark any apple-trees, pear-trees or other fruit trees, he shall forfeit to the party grieved, treble damages, by action of trespass, at the common law, and also £10 to the King.

By the 16 *C.* 2. *c.* 2. The constable may apprehend, or cause to be apprehended, every person he shall suspect having or carrying any burden of any kind of wood, under-wood, poles, or young trees, or bark, or bast of any trees, or any gates, stiles, posts, pales, rails or hedge-wood, broom, or furze—and by warrant of one justice, directed to any officer, such officer shall have power to enter into and search the houses, out-houses, yards, gardens or other places, belonging to the houses of every person they shall suspect to have any kind of wood, under-wood, poles or young trees, or bark, or bast of any trees, or any gates, stiles, posts, pales, rails or hedge-wood, broom or furze, and when they shall find any such, to apprehend the persons suspected for cutting and taking the same: and as well those apprehended carrying, as those in whose houses or other places the same shall be found, to carry before one justice. And if such person do not then and there give a good account how he came by the same, such as shall satisfy the said justice, or else shall not, in some convenient time to be set by the said justice, produce the party of whom he bought the same, or some credible witness to depose upon oath such sale thereof, he shall be convicted of cutting and spoiling the same, and punished as by the said act of the 43 *Eliz.* (*See ante. title "Trees," p.* 462.) And further, by this act, that is to say, for the first offence, he shall give the owner such damages and within such time as the justice shall appoint, and over and above, pay down for the use of the poor such sum, not exceeding 10*s.* as the justice shall think meet; and in default, be committed to the house of correction, not exceeding one month, or to be whipped by the constable: and for a second offence, committed to the house of correction for one month, and hard labor; and if again convicted, shall be deemed an incorrigible rogue. Prosecution to be within six weeks. And by the same act, whosoever shall buy any burdens of wood, or any poles or sticks of wood, or any other the premises which he may justly suspect to have been stolen, or unlawfully come by, one justice (on complaint in six weeks) may examine the matter on oath; and if he shall find that the same was bought of a person who might justly be suspected to have stolen, or unlawfully come by the same, and that the same was stolen or unlawfully

come by, he may award the party who bought the same, to pay treble value to him from whom it was unlawfully taken; and levy the same by distress, and in default, commitment to gaol for one month.

By the 9 *G. c.* 22. (called the black act,) if any person shall set fire to any stack of wood, he shall be guilty of felony. *See also ante. title* "Trees," p. 462.

Warrant to Search for Stolen Wood—on the 15 *C.* 2. *c.* 2. (Burn.)

—— District, } To the constable of ——.
to wit. } Whereas A. J. of ——, yeoman, hath this day made oath before me, J. P. Esq. one of his Majesty's justices of the peace for the said district, that divers quantities of wood, within the space of six weeks last past, have been cut, taken, and carried off and from his lands at ——, and that he hath just cause to suspect, and doth suspect, that the said wood, or part thereof, is concealed in the houses, out-houses, yards, gardens, or other places belonging to such houses of A. O. of ——, yeoman, at —— aforesaid: these are therefore to require you to enter into and search the said houses, out-houses, yards, gardens, or other places belonging to such houses of him the said A. O. at —— aforesaid; and if, on such search, you shall there find any such wood, that then you apprehend the person in whose house, out-house, or other place it shall be found, and bring him before me, or some other of his Majesty's justices of the peace for the said district, that such proceedings may be had thereupon as to law doth appertain.

Given under my hand and seal, at ——, in the year ——.

Order for Satisfaction to the Owner—on the 15 *C.* 2. *c.* 2. (Burn.)

—— District, } Whereas A. J. of —— in the said district, yeo-
to wit. } man, on the —— day of —— now last past, did make oath before me, J. P. Esq. one of his Majesty's justices of the peace for the said district, that on or since the —— day of —— now last past, a certain quantity of wood, the property of him, the said A. J. at ——, in the township of ——, in the district aforesaid, was cut and spoiled, and from thence taken and carried away; and that he had just cause to suspect, and did suspect, that A. O. of——, in the said district, yeoman, did cut, spoil, take, and carry away the same: and whereas, the said A. O. was, on the —— day of —— now last past, apprehended by A. C. constable of ——, in the said district, carrying wood suspected to be stolen by him, the said A. O. [*or*, whereas a certain quantity of wood, to wit. *(here specify the same)* suspected to be stolen was this day, by virtue of my warrant for that purpose directed to the constable

of ——, in the said district, found in the house, *(or other place,)* of the said A. O. at —— aforesaid;] and whereas, the said A. O. being now brought before me, hath not given to me any satisfactory account how he came by the said wood, nor can produce the party of whom he bought the same, nor any credible witness to testify upon oath the sale thereof; therefore the said A. O. is convicted by me, of cutting, spoiling, and taking away the said wood: and whereas, it is also duly proved before me, that A. J. of —— aforesaid, yeoman, was and is the owner of the said wood, and that the said offence was committed at —— aforesaid, in the district aforesaid; I do therefore hereby order and appoint the said A. O. within the space of —— days now next ensuing, to pay unto the said A. J. the sum of ——, in recompence and satisfaction for damages done unto him, the said A. J., by him, the said A. O. in cutting, spoiling, taking, and carrying away the said wood: and I do also hereby order the said A. O. within the space of —— days now next ensuing as aforesaid, to pay to —— the treasurer of the said —— district, for the use of the said district, and to be applied and accounted for as by law is directed, the sum of 10*s.* for his said offence. Given under my hand and seal, at ——, in the year ——.

Commitment thereupon for non-payment. (BURN.)

—— District, } To the constable of ——, and to the keeper of
to wit. } the house of correction at —— in the said district:—Whereas A. J. of —— in the said district, yeoman, on the —— day of —— now last past, did make oath before me, J. P. Esq. one of his Majesty's justices of the peace for the said district, that within the space of six weeks then last past, a certain quantity of wood, the property of him, the said A. J. at ——, in the township of ——, in the district aforesaid, was cut and spoiled, and from thence taken and carried away; and that he had just cause to suspect, and did suspect, that A. O. of ——, in the said district, yeoman, did cut, spoil, take, and carry away the same: and whereas, the said A. O. was on the —— day of —— now last past, apprehended by A. C. constable of ——, in the said district, carrying wood suspected to be stolen by him, the said A. O.; [*or*, whereas a certain quantity of wood, (specifying the particulars,) suspected to be stolen, was, on the —— day of —— now last past, by virtue of my warrant for that purpose, directed to the constable of ——, in the said district, found in the house, (or other place) of the said A. O. at —— aforesaid:] and whereas, the said A. O. on the —— day of —— now last past, having been brought before me, did not and could not give to me

any satisfactory account how he came by the said wood, nor could produce the party of whom he bought the same, nor any credible witness to testify upon oath the sale thereof; and thereupon was by me convicted of cutting and spoiling the said wood, and ordered to pay to the said A. J. the owner of the said wood, the sum of ——, within —— days then next ensuing, in recompence and satisfaction for damages, and also the sum of 10*s.* to the treasurer of the said —— district, to be applied and accounted for as by law is directed: and whereas, it appears to me that the said several sums have been duly demanded of him, the said A. O. and that he, the said A. O. hath refused and doth refuse to pay, and hath not yet paid the same, nor any part thereof; I do therefore hereby require of you, the said constable of —— aforesaid, to convey the said A. O. to the said house of correction, at —— aforesaid, and to deliver him to the keeper thereof, together with this warrant: and I do hereby command you, the said keeper, to receive him into your custody, in the said house of correction, and there to detain him for the space of —— days. Herein fail you not. Given under my hand and seal, at ——, in the said district, the —— day of ——, in the year ——.

Order for the buyer of Stolen Wood to pay treble Damages—on the 15 *G.* 2. *c.* 2. (Burn.)

—— District, } Whereas it hath been duly proved before me,
to wit. } —— Esquire, one of his Majesty's justices of the peace for the said district, that A. O. of ——, yeoman, did, within the space of six weeks now last past, buy several burdens of wood of B. O. of ——, yeoman, and that he, the said B. O. is justly suspected to have stolen the same from A. J. of ——, yeoman; and that the said wood, at the time when the said A. O. so bought the same, was of the value of 10*s.*; I do therefore hereby order that the said A. O. do forthwith pay unto the said A. J. the sum of 30*s.* the same being treble value of the said wood, so by him bought as aforesaid. Given under my hand and seal, at ——, in the said district, the —— day of ——, in the —— year of the reign of ——.

Warrant of Distress for non-payment of the same. (Burn.)

—— District, } To the constable of ——.
to wit. } (—— *here recite the order* ——, *then say,*) And whereas the said A. O. hath not paid to the said A. J. the aforesaid sum of 30*s.* nor any part thereof; these are therefore to command you to make distress of the goods and chattels of him, the said A. O.

and if, within the space of (five) days next after such distress by you made, the said sum of ——, together with reasonable charges of taking and keeping the said distress shall not be paid, that then you do sell the said goods and chattels so by you distrained; and out of the money arising by such sale, pay the said sum of 30s. unto him, the said A. J. returning the overplus, upon demand, unto him, the said A. O. the reasonable charges of taking, keeping and selling the said distress, being thereout first deducted. Given, &c.

WORKMEN.

By stat. 2 & 3 *Ed.* 6. *c.* 15. § 1. If any artificers, workmen, or laborers, do conspire, covenant, or promise together, or make any oaths, that they shall not make or do their works but at a certain price, or rate; or shall not enterprise, or take upon them to finish that another hath begun; or shall do but a certain work in a day; or shall not work but at certain hours and times; that, then every person so conspiring, covenanting, swearing, or offending, being lawfully convicted thereof, by witness, confession, or otherwise, shall forfeit, for the first offence, £10 to the King, if he have sufficient to pay the same, and do also pay the same within six days next after his conviction; or else shall suffer for the same offence twenty days imprisonment, and shall have only bread and water for his sustenance: and for the second offence, shall forfeit £20 to the King, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction; or else shall suffer for the second offence, punishment of the pillory; and for the third offence, shall forfeit £40 to the King, if he have sufficient to pay the same, and also do pay the same within six days next after his conviction, or else shall sit on the pillory and lose one of his ears; and also shall, at all times after that, be taken as a man infamous, and his sayings, depositions or oath, not to be credited at any time, in any matter of judgment. Sec. 3. Justices of the assize, justices of the peace, &c. at all and every their sessions and courts, shall have full power and authority to inquire, hear, and determine all and singular such offences committed against this statute, and to punish, or cause to be punished, the offender, according to the statute. Any one workman may refuse to work, till he is paid the price he pleases to fix upon his *own* labor; but if *two* or more enter into an engagement of this kind, they are guilty of a *conspiracy*, and may be prosecuted by an indictment, or an information. *Bl. Com.* p. 160. *Ed.* 15. *(note.)*

FINIS.

APPENDIX.

Constitutional Act.

(31 Geo. 3. c. 31.)

An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, "An Act for making more effectual provision for the Government of the Province of Quebec, in North America," and to make further provision for the Government of the said Province.

WHEREAS, an act was passed in the fourteenth year of the reign of his present Majesty, intituled, "an act for making more effectual provision for the government of the province of Quebec, in North America;" and whereas, the said act is in many respects inapplicable to the present condition and circumstances of the said province; and whereas, it is expedient and necessary that further provision should now be made for the good government and prosperity thereof: may it therefore please your most excellent Majesty, that it may be enacted, and be it enacted by the King'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, that so much of the said act as in any manner relates to the appointment of a council for the affairs of the said province of Quebec, or to the power given by the said act to the said council, or to the major part of them, to make ordinances for the peace, welfare, and good government of the said province, with the consent of his Majesty's governor, lieutenant governor, or commander in chief for the time being, shall be, and the same is hereby repealed.

2. And whereas, his Majesty has been pleased to signify, by his message to both houses of parliament, his royal intention to divide his province of Quebec into two separate provinces, to be called the province of Upper Canada, and the province of Lower Canada; *Be it enacted by the authority aforesaid*, That there shall be within each of the said provinces respectively, a legislative council, and an assembly, to be severally composed and constituted in the manner herein after described; and that in each of the said provinces respectively, his Majesty, his heirs or successors, shall have power, during the continuance of this act, by and with the advice and consent of the legislative council and assembly of such provinces respectively, to make laws for the peace, welfare, and good government thereof, such laws not being repugnant to this act; and that all such laws, being passed by the legislative council and assembly of either of the said provinces

respectively, and assented to by his Majesty, his heirs or successors, or assented to in his Majesty's name, by such person as his Majesty, his heirs or successors, shall from time to time appoint to be the governor or lieutenant governor of such province, or by such person as his Majesty, his heirs or successors, shall, from time to time, appoint to administer the government within the same, shall be, and the same are hereby declared to be, by virtue of and under the authority of this act, valid and binding, to all intents and purposes whatever, within the province in which the same shall have been so passed.

3. *And be it, &c.* That for the purpose of constituting such legislative council, as aforesaid, in each of the said provinces respectively, it shall and may be lawful for his Majesty, his heirs or successors, by an instrument under his or their sign manual, to authorise and direct the governor or lieutenant governor, or person administering the government, in each of the said provinces respectively, whithin the time herein after mentioned, in his Majesty's name, and by an instrument under the great seal of such province, to summon to the said legislative council, to be established in each of the said provinces respectively, a sufficient number of discreet and proper persons, being not fewer than seven to the legislative council, for the province of Upper Canada, and not fewer than fifteen to the legislative council for the province of Lower Canada; and that it shall also be lawful for his Majesty, his heirs or successors, from time to time, by an instrument under his or their sign manual, to authorise and direct the governor or lieutenant governor, or person administering the government in each of the said provinces respectively, to summon to the legislative council of such province, in like manner, such other person or persons as his Majesty, his heirs or successors, shall think fit; and that every person who shall be so summoned to the legislative council of either of the said provinces respectively, shall thereby become a member of such legislative council, to which he shall have been so summoned.

4. *Provided always, and be it, &c.* That no person shall be summoned to the legislative council, in either of the said provinces, who shall not be of the full age of twenty-one years, and a natural born subject of his Majesty, or a subject of his Majesty naturalized by act of the British parliament, or a subject of his Majesty, having become such by the conquest and cession of the province of Canada.

5. *And be it, &c.* That every member of each of the said legislative councils, shall hold his seat therein for the term of his life, but subject nevertheless to to the provisions hereinafter contained for vacating the same, in the cases hereinafter specified.

6. *And be it, &c.* That whenever his Majesty, his heirs or successors, shall think proper to confer upon any subject of the crown of Great Britain, by letters patent under the great seal of either of the said provinces, any hereditary title of honor, rank, or dignity of such province, descendible according to any course of descent limited in such letters patent, it shall and may be lawful for his Majesty, his heirs or successors, to annex thereto by the said letters patent, if his Majesty, his heirs or successors, shall so think fit, an hereditary right of being summoned to the legislative council of such province, descendible according to the course of descent so limited with respect to such title, rank, or dignity; and that every person on whom such right shall be so conferred, or to whom such right shall severally so descend, shall thereupon be entitled to demand from the governor, lieutenant governor, or person administering the government of such province, his writ of summons to such legislative council, at any time after he shall have attained the age of twenty-one years, subject nevertheless to the provisions hereinafter contained.

7. *Provided always, and be it, &c.* That when and so often as any person to whom such hereditary right shall have descended, shall, without the permission of his Majesty, his heirs or successors, signified to the legislative council of the province by the governor, lieutenant governor, or person administering the government there, have been absent from the said province for the space of four years continually, at any time between the date of his succeeding to such right, and the time of his applying for such writ of summons, if he shall have been of the age of twenty-one years, or upwards at the time of his so succeeding, or at any time between the date of his attaining the said age and the time of his so applying, if he shall not have been of the said age at the time of his so succeeding; and also, when and so often as any such person shall, at any time before his applying for such writ of summons, have taken any oath of allegiance or obedience to any foreign prince or power, in every such case such person shall not be entitled to receive any writ of summons to the legislative council by virtue of such hereditary right, unless his Majesty, his heirs or successors, shall, at any time think fit, by instrument under his or their sign manual, to direct that such person shall be summoned to the said council; and the governor, lieutenant governor, or person administering the government in the said provinces respectively, is hereby authorized and required, previous to granting such writ of summons to any person so applying for the same, to interrogate such person upon oath, touching the said several particulars, before such executive council as shall have been appointed by his Majesty, his heirs or successors, within such province, for the affairs thereof.

8. *Provided also, and be it, &c.* That if any member of the legislative councils of either of the said provinces respectfully shall leave such province, and shall reside out of the same for the space of four years continually, without the permission of his Majesty, his heirs or successors, signified to such legislative council by the governor or lieutenant governor, or person administering his Majesty's government there, or for the space of two years continually, without the like permission, or the permission of the governor, lieutenant governor, or person administering the government of such province, signified to such legislative council in the manner aforesaid; or if any such member shall take any oath of allegiance or obedience to any foreign prince or power, his seat in such council shall thereby become vacant.

9. *Provided also, and be it, &c.* That in every case where a writ of summons to such legislative council shall have been lawfully withheld from any person to whom such hereditary right as aforesaid shall have descended, by reason of such absence from the province as aforesaid, or of his having taken an oath of allegiance or obedience to any foreign prince or power, and also in every case where the seat in such council of any member thereof, having such hereditary right as aforesaid, shall have been vacated by reason of any of the causes hereinbefore specified, such hereditary right shall remain suspended during the life of such person, unless his Majesty, his heirs or successors, shall afterwards think fit to direct that he be summoned to such council; but that on the death of such person such right, subject to the provisions herein contained, shall descend to the person who shall next be entitled thereto, according to the course of descent limited in the letters patent by which the same shall have been originally conferred.

10. *Provided also, and be it, &c.* That if any member of either of the said legislative councils shall be attainted for treason in any court of law within any of his Majesty's dominions, his seat in such council shall thereby become vacant, and any such hereditary right as aforesaid then vested in such person, or to be derived to any other person through him, shall be utterly forfeited and extinguished.

11. *Provided also, and be it, &c.* That whenever any question shall arise respecting the right of any person to be summoned to either of the said legislative councils respectively, or respecting the vacancy of the seat in such legislative council of any person having been summoned thereto, every such question shall, by the governor or lieutenant governor of the province, or by the person administering the government there, be referred to such legislative council, to be by the said council heard and determined; and that it shall and may be lawful either for the person desiring such writ

of summons, or respecting whose seat such question shall have arisen, or for his Majesty's attorney general of such province, in his Majesty's name, to appeal from the determination of the said council in such case, to his Majesty in his parliament of Great Britain; and that the judgment thereon of his Majesty in his said parliament shall be final and conclusive to all intents and purposes whatever.

12. *And be it, &c.* That the governor, or lieutenant governor of the said provinces respectively, or the person administering his Majesty's government therein respectively, shall have power and authority, from time to time, by an instrument under the great seal of such province, to constitute, appoint, and remove the speakers of the legislative councils of such provinces respectively.

13. *And be it, &c.* That for the purpose of constituting such assembly as aforesaid, in each of the said provinces respectfully, it shall and may be lawful for his Majesty, his heirs or successors, by an instrument under his or their sign manual, to authorise and direct the governor or lieutenant governor, or person administering the government in each of the said provinces respectively, within the time hereinafter mentioned, and thereafter from time to time, as occasion shall require, in his Majesty's name, and by an instrument under the great seal of such province, to summon and call together an assembly in and for such province.

14. *And be it, &c.* That, for the purpose of electing the members of such assemblies respectively, it shall and may be lawful for his Majesty, his heirs or successors, by an instrument under his or their sign manual, to authorise the governor or lieutenant governor of each of the said provinces respectively, or the person administering the government therein, within the time hereinafter mentioned, to issue a proclamation dividing such province into districts, or counties, or circles, and towns or townships, and appointing the limits thereof, and declaring and appointing the number of representatives to be chosen by each of such districts, or counties, or circles, and towns or townships respectively; and that it shall also be lawful for his Majesty, his heirs or successors, to authorise such governor or lieutenant governor, or person administering the government, from time to time, to nominate and appoint proper persons to execute the office of returning officer in each of the said districts, or counties, or circles, and towns or townships respectively; and that such division of the said provinces into districts, or counties, or circles, and towns or townships, and such declaration and appointment of the number of representatives to be chosen by each of the said districts, or counties, or circles, and towns or townships respectively, and also such nomination and appointment of returning officers in the same, shall be valid and

effectual to all the purposes of this act, unless it shall at any time be otherwise provided by any act of the legislative council and assembly of the province, assented to by his Majesty, his heirs or successors.

15. *Provided nevertheless, and be it, &c.* That the provision hereinbefore contained, for empowering the governor, lieutenant governor, or person administering the government of the said provinces respectively, under such authority as aforesaid from his Majesty, his heirs or successors, from time to time, to nominate and appoint proper persons to execute the office of returning officer, in the said districts, counties, circles, and towns or townships, shall remain and continue in force in each of the said provinces respectively, for the term of two years, from and after the commencement of this act, within such province, and no longer; but subject, nevertheless, to be sooner repealed or varied by any act of the legislative council and assembly of the province, assented to by his Majesty, his heirs or successors.

16. *Provided always, and be it, &c.* That no person shall be obliged to execute the said office of returning officer for any longer time than one year or oftener than once, unless it shall at any time be otherwise provided by any act of the legislative council and assembly of the province, assented to by his Majesty, his heirs or successors.

17. *Provided also, and be it,* &c. That the whole number of members to be chosen in the province of Upper Canada shall not be less than sixteen, and the whole number of members to be chosen in the province of Lower Canada shall not be less than fifty.

18. *And be it,* &c. That writs for the election of members to serve in the said assemblies respectively, shall be issued by the governor, lieutenant governor, or person administering his Majesty's government within the said provinces respectively, within fourteen days after the sealing of such instrument as aforesaid, for summoning and calling together such assembly, and that such writs shall be directed to the respective returning officers of the said districts, or counties, or circles, and towns or townships, and that such writs shall be made returnable within fifty days at farthest from the day on which they shall bear date, unless it shall at any time be otherwise provided by any act of the legislative council and assembly of the province, assented to by his Majesty, his heirs or successors; and that writs shall in like manner and form be issued for the election of members in the case of any vacancy which shall happen by the death of the person chosen, or by his being summoned to the legislative council of either province, and that such writs shall be made returnable within fifty days at farthest from the day on which they shall bear date, unless it shall at any time be otherwise

provided by any act of the legislative council and assembly of the province, assented to by his Majesty, his heirs or successors; and that in the case of any such vacancy which shall happen by the death of the person chosen, or by reason of his being so summoned as aforesaid, the writ for the election of a new member shall be issued within six days after the same shall be made known to the proper officer for issuing such writs of election.

19. *And be it, &c.* That all and every the returning officers so appointed as aforesaid, to whom any such writs as aforesaid shall be directed, shall and they are hereby authorised and required duly to execute such writs.

20. *And be it, &c.* That the members for the several districts, or counties, or circles, of the said provinces respectively, shall be chosen by the majority of votes of such persons as shall severally be possessed, for their own use and benefit, of lands or tenements within such district, or county, or circle, as the case shall be, such lands being by them held in freehold, or in fief, or in roture, or by certificate derived under the authority of the governor and council of the province of Quebec, and being of the yearly value of forty shillings sterling, or upwards, over and above all rents and charges payable out of or in respect of the same; and that the members for the several towns or townships within the said provinces respectively, shall be chosen by the majority of votes of such persons as either shall be severally possessed, for their own use and benefit, of a dwelling-house and lot of ground in such town or township, such dwelling-house and lot of ground being by them held in like manner as aforesaid, and being of the yearly value of five pounds sterling, or upwards, or, as having been resident within the said town or township for the space of twelve calendar months next before the date of the writ of summons for the election, shall bona fide have paid one year's rent for the dwelling-house in which they shall have so resided, at the rate of ten pounds sterling per annum, or upwards.

21. *Provided always, and be it, &c.* That no person shall be capable of being elected a member to serve in either of the said assemblies, or sitting or voting therein, who shall be a member of either of the said legislative councils, to be established as aforesaid in the said two provinces, or who shall be a minister of the church of England, or a minister, priest, ecclesiastic, or teacher, either according to the rites of the church of Rome, or under any other form or profession of religious faith or worship.

22. *Provided also, and be it, &c.* That no person shall be capable of voting at any election of a member to serve in such assembly, in either of the said provinces, or of being elected at any such election, who shall not be of the full age of twenty-one

years, and a natural born subject of his Majesty, or a subject of his Majesty naturalized by act of the British Parliament, or a subject of his Majesty, having become such by the conquest and cession of the province of Canada.

23. *And be it, &c.* That no person shall be capable of voting at any election of a member to serve in such assembly, in either of the said provinces, or of being elected at any such election, who shall have been attainted for treason or felony, in any court of law within any of his Majesty's dominions, or who shall be within any description of persons disqualified by any act of the legislative council and assembly of the province, assented to by his Majesty, his heirs or successors.

24. *Provided also, and be it,* &c. That every voter, before he is admitted to give his vote at any such election, shall, if required by any of the candidates, or by the returning officer, take the following oath, which shall be administered in the English or French language, as the case may require:

I, A. B. do declare and testify, in the presence of Almighty God, that I am, to the best of my knowledge and belief, of the full age of twenty-one years, and that I have not voted before at this election.

And that every such person shall also, if so required as aforesaid, make oath, previous to his being admitted to vote, that he is, to the best of his knowledge and belief, duly possessed of such lands and tenements, or of such a dwelling-house and lot of ground, or that he has bona fide been so resident and paid such rent for his dwelling-house, as entitles him, according to the provisions of this act, to give his vote at such election, for the county, or district, or circle, or for the town or township for which he shall offer the same.

25. *And be it,* &c. That it shall and may be lawful for his Majesty, his heirs or successors, to authorize the governor, or lieutenant governor, or person administering the government, within each of the said provinces respectively, to fix the time and place of holding such elections, giving not less than eight days notice of such time, subject nevertheless to such provisions as may hereafter be made in these respects, by any act of the legislative council and assembly of the province, assented to by his Majesty, his heirs or successors.

26. *And be it,* &c. That it shall and may be lawful for his Majesty, his heirs, or successors, to authorize the governor, or lieutenant governor of each of the said provinces respectively, or the person administering the government therein, to fix the places and times of holding the first and every other session of the legislative council and assembly of such province, giving due and sufficient

notice thereof, and to prorogue the same from time to time, and to dissolve the same, by proclamation or otherwise, whenever he shall judge it necessary or expedient.

27. *Provided always, and be it*, &c. That the said legislative council and assembly, in each of the said provinces, shall be called together once at the least in every twelve calendar months, and that every assembly shall continue for four years from the day of the return of the writs for chusing the same, and no longer, subject nevertheless to be sooner prorogued or dissolved by the governor or lieutenant governor of the province, or person administering his Majesty's government therein.

28. *And be it*, &c. That all questions which shall arise in the said legislative councils or assemblies respectively, shall be decided by the majority of voices of such members as shall be present; and that in all cases where the voices shall be equal, the speaker of such council or assembly, as the case shall be, shall have a casting voice.

29. *Provided always, and be it*, &c. That no member, either of the legislative council or assembly, in either of the said provinces, shall be permitted to sit or vote therein, until he shall have taken and subscribed the following oath, either before the governor or lieutenant governor of such province, or person administering the government therein, or before some person or persons authorized by the said governor or lieutenant governor, or other person as aforesaid, to administer such oath, and that the same shall be administered in the English or French language as the case shall require.

I, A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance to his Majesty King George, as lawful sovereign of the kingdom of Great Britain, and of these provinces dependant on and belonging to the said kingdom; and that I will defend him to the utmost of my power against all traitorous conspiracies and attempts whatever which shall be made against his person, crown, and dignity; and that I will do my utmost endeavour to disclose and make known to his Majesty, his heirs or successors, all treasons and traitorous conspiracies and attempts which I shall know to be against him, or any of them; and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any person or power whatever to the contrary. So help me God.

30. *And be it*, &c. That whenever any bill which has been passed by the legislative council, and by the house of assembly, in either of the said provinces respectively, shall be presented for his Majesty's assent, to the governor or lieutenant governor of such province, or to the person administering his Majesty's govern-

ment therein, such governor or lieutenant governor, or person administering the government, shall, and he is hereby authorised and required to declare, according to his discretion, but subject nevertheless to the provisions contained in this act, and to such instructions as may from time to time be given in that behalf by his Majesty, his heirs or successors, that he assents to such bill in his Majesty's name, or that he withholds his Majesty's assent from such bill, or that he reserves such bill for the signification of his Majesty's pleasure thereon.

31. *Provided always, and be it*, &c. That whenever any bill, which shall have been so presented for his Majesty's assent, to such governor, lieutenant governor, or person administering the government, shall, by such governor, lieutenant governor, or person administering the government, have been assented to in his Majesty's name, such governor, lieutenant governor, or person as aforesaid, shall, and he is hereby required, by the first convenient opportunity to transmit to one of his Majesty's principal secretaries of state an authentic copy of such bill so assented to; and that it shall and may be lawful, at any time within two years after such bill shall have been so received by such secretary of state, for his Majesty, his heirs or successors, by his or their order in council, to declare his or their disallowance of such bill, and that such disallowance, together with a certificate, under the hand and seal of such secretary of state, testifying the day on which such bill was received as aforesaid, being signified by such governor, lieutenant governor, or person administering the government, to the legislative council and assembly of such province, or by proclamation, shall make void and annul the same, from and after the date of such signification.

32. *And be it, &c.* That no such bill, which shall be so reserved for the signification of his Majesty's pleasure thereon, shall have any force or authority within either of the said provinces respectively, until the governor, lieutenant governor, or person administering the government, shall signify, either by speech or message, to the legislative council and assembly of such province, or by proclamation, that such bill has been laid before his Majesty in council, and that his Majesty has been pleased to assent to the same; and that an entry shall be made in the journals of the said legislative council, of every such speech, message or proclamation, and a duplicate thereof, duly attested, shall be delivered to the proper officer, to be kept amongst the public records of the province; and that no such bill, which shall be so reserved as aforesaid, shall have any force or authority within either of the said provinces respectively, unless his Majesty's assent thereto shall have been so signified as aforesaid, within the space of two years

from the day on which such bill shall have been presented for his Majesty's assent to the governor, lieutenant governor, or person administering the government of such province.

33. *And be it, &c.* That all laws, statutes, and ordinances, which shall be in force on the day to be fixed in the manner hereinafter directed for the commencement of this act, within the said provinces, or either of them, or in any part thereof respectively, shall remain and continue to be of the same force, authority and effect, in each of the said provinces respectively, as if this act had not been made, and as if the said province of Quebec had not been divided; except in so far as the same are expressly repealed or varied by this act, or in so far as the same shall or may hereafter, by virtue of and under the authority of this act, be repealed or varied by his Majesty, his heirs or successors, by and with the advice and consent of the legislative councils and assemblies of the said provinces respectively, or in so far as the same may be repealed or varied by such temporary laws or ordinances as may be made in the manner hereinafter specified.

34. *And whereas* by an ordinance passed in the province of Quebec, the governor and council of the said province were constituted a court of civil jurisdiction, for hearing and determining appeals in cartain cases therein specified, be it further enacted by the authority aforesaid, That the governor or lieutenant governor, or person administering the government of each of the said provinces respectively, together with such executive council as shall be appointed by his Majesty for the affairs of such province, shall be a court of civil jurisdiction within each of the said provinces respectively, for hearing and determining appeals within the same, in the like cases, and in the like manner and form, and subject to such appeal therefrom, as such appeals might before the passing of this act have been heard and determined by the governor and council of the province of Quebec; but subject nevertheless to such further or other provisions as may be made in this behalf, by any act of the legislative council and assembly of either of the said provinces respectively, assented to by his Majesty, his heirs or successors.

35. *And whereas* by the above mentioned Act, passed in the fourteenth year of the reign of his present Majesty, it was declared, That the Clergy of the Church of Rome, in the Province of Quebec, might hold, receive, and enjoy, their accustomed dues and rights, with respect to such persons only as should profess the said religion: *Provided nevertheless*, that it should be lawful for his Majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the Protestant religion, and for the maintenance and support of a Protestant Clergy within the said Province, as he or they should from time to time

think necessary and expedient; *And whereas* by his Majesty's royal instructions, given under his Majesty's royal sign manual on the third day of January, in the year of our Lord one thousand seven hundred and seventy-five, to Guy Carleton, Esquire, now Lord Dorchester, at that time his Majesty's Captain-General and Governor-in-Chief in and over his Majesty's Province of Quebec, his Majesty was pleased, amongst other things, to direct, "That no incumbent professing the religion of the Church of Rome, appointed to any parish in the said province, should be entitled to receive any tythes for lands or possessions occupied by a Protestant, but that such tythes should be received by such persons as the said Guy Carleton, Esquire, his Majesty's Captain-General and Governor-in-Chief in and over his Majesty's said Province of Quebec, should appoint, and should be reserved in the hands of his Majesty's Receiver General of the said Province, for the support of a Protestant Clergy in his Majesty's said Province, to be actually resident within the same, and not otherwise, according to such directions as the said Guy Carleton, Esquire, his Majesty's Captain-General and Governor-in-Chief in and over his Majesty's said Province, should receive from his Majesty in that behalf; and that in like manner all growing rents and profits of a vacant benefice should, during such vacancy, be reserved for and applied to the like uses"; *And whereas* his Majesty's pleasure has likewise been signified to the same effect in his Majesty's royal instructions, given in like manner to Sir Frederick Haldimand, Knight of the most Honorable order of the Bath, late his Majesty's Captain-General and Governor-in-Chief in and over his Majesty's said Province of Quebec; and also in his Majesty's royal instructions, given in like manner to the said right honorable Guy, Lord Dorchester, now his Majesty's Captain-General and Governor-in-Chief in and over his Majesty's said Province of Quebec—*Be it enacted by the authority aforesaid*, that the said declaration and provision contained in the said above mentioned act, and also the said provision so made by his Majesty in consequence thereof, by his instructions before recited, shall remain and continue to be of full force and effect in each of the said two Provinces of Upper Canada and Lower Canada respectively, except in so far as the said declaration or provisions respectively, or any part thereof, shall be expressly varied or repealed by any act or acts which may be passed by the legislative council and assembly of the said Provinces respectively, and assented toby his Majesty, hisheirs or successors, under the restriction hereinafter provided.

36. *And whereas* his Majesty has been graciously pleased, by message to both Houses of Parliament, to express his royal desire to be enabled to make a permanent appropriation of lands in the said Provinces, for the support and maintenance of a Protestant Clergy within the same, in proportion to such lands as have been already granted within the same by his Majesty: *And whereas* his Majesty has been graciously pleased, by his said message, further to signify his royal desire that such provision may be made, with respect to all future grants of land within the said Provinces respectively, as may best conduce to the due and sufficient support and maintenance of a Protestant

Clergy within the said Provinces, in proportion to such increase as may happen in the population and cultivation thereof: therefore, for the purpose of more effectually fulfilling his Majesty's gracious intentions, as aforesaid, and of providing for the due execution of the same in all time to come—*Be it enacted by the authority aforesaid*, That it shall and may be lawful for his Majesty, his heirs or successors, to authorise the Governor or Lieutenant Governor of each of the said Provinces respectively, or the person administering the Government therein, to make, from and out of the lands of the Crown within such Provinces, such allotment and appropriation of lands, for the support and maintenance of a Protestant Clergy within the same, as may bear a due proportion to the amount of such lands within the same as have at any time been granted by or under the authority of his Majesty: and that whenever any grant of lands within either of the said Provinces shall hereafter be made, by or under the authority of his Majesty, his heirs or successors, there shall at the same time be made, in respect of the same, a proportionable allotment and appropriation of lands for the above mentioned purpose, within the township or parish to which such lands so to be granted shall appertain or be annexed, or as nearly adjacent thereto as circumstances will admit; and that no such grant shall be valid or effectual unless the same shall contain a specification of the lands so allotted and appropriated, in respect of the lands to be thereby granted; and that such lands, so allotted and appropriated, shall be, as nearly as the circumstances and nature of the case will admit, of the like quality as the lands in respect of which the same are so allotted and appropriated, and shall be, as nearly as the same can be estimated at the time of making such grant, equal in value to the seventh part of the lands so granted.

37. *And be it &c.* That all and every the rents, profits or emoluments, which may at any time arise from such lands, so allotted and appropriated as aforesaid, shall be applicable solely to the maintenance and support of a Protestant Clergy, within the Province in which the same shall be situated, and to no other use or purpose whatever.

38. *And be it &c.* That it shall and may be lawful for his Majesty, his Heirs or Successors, to authorize the Governor or Lieutenant Governor of each of the said Provinces respectively, or the person administering the Government therein from time to time, with the advice of such Executive Council as shall have been appointed by his Majesty, his Heirs or Successors, within such Province, for the affairs thereof, to constitute and erect, within every township or parish which now is or hereafter may be formed, constituted or erected, within such Province, one or more parsonage or rectory, or parsonages or rectories, according to the establishment of the Church of England; and from time to time, by an instrument under the great seal of such Province, to endow every such parsonage or rectory with so much or such a part of the lands so allotted and appropriated as aforesaid, in respect of any lands within such township or parish, which shall have been granted subsequent to the commencement of this Act, or of such lands as may have been allotted and appropriated for the same purpose, by or in

virtue of any instruction which may be given by his Majesty, in respect of any lands granted by his Majesty before the commencement of this Act, as such Governor, Lieutenant Governor, or person administering the Government, shall, with the advice of the said Executive Council, judge to be expedient under the then existing circumstances of such township or parish.

39. *And be it &c.* That it shall and may be lawful for his Majesty, his Heirs or Successors, to authorise the Governor, Lieutenant Governor, or person administering the government of each of the said Provinces respectively, to present to every such parsonage or rectory, an Incumbent or Minister of the Church of England, who shall have been duly ordained according to the rites of the said Church, and to supply from time to time such vacancies as may happen therein; and that every person so presented to any such parsonage or rectory, shall hold and enjoy the same, and all rights, profits and emoluments, thereunto belonging or granted, as fully and amply, and in the same manner, and on the same terms and conditions, and liable to the performance of the same duties, as the Incumbent of a parsonage or rectory in England.

40. *Provided always, and be it &c.* That every such presentation of an Incumbent or Minister to any such parsonage or rectory, and also the enjoyment of any such parsonage or rectory, and of the rights, profits and emoluments thereof, by any such Incumbent or Minister, shall be subject and liable to all rights of institution, and all other spiritual and ecclesiastical jurisdiction and authority, which have been lawfully granted by his Majesty's royal letters patent to the Bishop of Nova Scotia, or which may hereafter, by his Majesty's royal authority, be lawfully granted or appointed to be administered and executed within the said Provinces, or either of them respectively, by the said Bishop of Nova Scotia, or by any other person or persons, according to the laws and canons of the Church of England, which are lawfully made and received in England.

41. *Provided always, and be it, &c.* That the several provisions hereinbefore contained, respecting the allotment and appropriation of lands for the support of a Protestant Clergy within the said Provinces, and also respecting the constituting, erecting, and endowing parsonages or rectories within the said provinces; and also respecting the presentation of incumbents or ministers to the same; and also respecting the manner in which such incumbents or ministers shall hold and enjoy the same, shall be subject to be varied or repealed by any express provisions for that purpose, contained in any act or acts which may be passed by the legislative council and assembly of the said Provinces respectively, and assented to by his Majesty, his heirs or successors, under the restriction hereinafter provided.

42. *Provided nevertheless, and be it, &c.* That whenever any act or acts shall be passed by the legislative council and assembly of either of the said provinces, containing any provisions to vary or repeal the above recited declaration and provisions contained in the said act passed in the fourteenth year of the reign of his present Majesty; or

to vary or repeal the above recited provision contained in his Majesty's royal instructions, given on the third day of January, in the year of our Lord one thousand seven hundred and seventy-five, to the said Guy Carleton, Esquire, now Lord Dorchester; or to vary or repeal the provisions hereinbefore contained for continuing the force and effect of the said declaration and provisions; or to vary or repeal any of the several provisions hereinbefore contained respecting the allotment and appropriation of lands for the support of a protestant clergy within the said Provinces; or respecting the constituting, erecting, or endowing parsonages or rectories within the said provinces; or respecting the presentation of Incumbents or Ministers to the same; or respecting the manner in which such incumbents or Ministers shall hold and enjoy the same: and also that whenever any act or acts shall be so passed, containing any provisions which shall in any manner relate to or affect the enjoyment or exercise of any religious form or mode of worship; or shall impose or create any penalties, burthens, disabilities, or disqualifications, in respect of the same; or shall in any manner relate to or affect the payment, recovery or enjoyment, of any of the accustomed dues or rights hereinbefore mentioned; or shall in any manner relate to the granting, imposing, or recovering any other dues or stipends, or emoluments whatever, to be paid to or for the use of any minister, priest, ecclesiastic or teacher, according to any religious form or mode of worship, in respect of his said office or function; or shall in any manner relate to or affect the establishment or discipline of the church of England, amongst the Ministers and members thereof within the said Provinces; or shall in any manner relate to or affect the King's prerogative touching the granting of waste lands of the Crown within the said provinces, every such act or acts shall, previous to any declaration or signification of the King's assent thereto, be laid before both Houses of Parliament in Great Britain; and that it shall not be lawful for his Majesty, his heirs or successors, to signify his or their assent to any such act or acts, until thirty days after the same shall have been laid before the said houses, or to assent to any such act or acts, in case either house of parliament shall, within the said thirty days, address his Majesty, his heirs or successors, to withhold his or their assent from such Act or Acts, and that no such Act shall be valid or effectual to any of the said purposes, within either of the said Provinces, unless the Legislative Council and Assembly of such Province shall, in the session in which the same shall have been passed by them, have presented to the governor, lieutenant governor, or person administering the government of such Province, an address or addresses, specifying that such Act contains provisions for some of the said purposes herein before specially described, and desiring that, in order to give effect to the same, such Act should be transmitted to England without delay, for the purpose of being laid before Parliament previous to the signification of his Majesty's assent thereto.

43. *And be it, &c.* That all lands which shall be hereafter granted within the said province of Upper Canada, shall be granted in free and common soccage, in like manner as lands are now holden in free and

common soccage, in that part of Great Britain called England; and that in every case where lands shall be hereafter granted within the said province of Lower Canada, and where the grantee thereof shall desire the same to be granted in free and common soccage, the same shall be so granted; but subject nevertheless to such alterations, with respect to the nature and consequences of such tenure of free and common soccage, as may be established by any law or laws which may be made by his Majesty, his heirs or successors, by and with the advice and consent of the legislative council and assembly of the province.

44. *And be it, &c.* That if any person or persons holding any lands in the said province of Upper Canada, by virtue of any certificate of occupation derived under the authority of the governor and council of the province of Quebec, and having power and authority to alienate the same, shall, at any time, from and after the commencement of this act, surrender the same into the hands of his Majesty, his heirs or successors, by petition to the governor or lieutenant governor, or person administering the government of the said province, setting forth that he, she, or they, is or are desirous of holding the same in free and common soccage, such governor, lieutenant governor, or person administering the government, shall thereupon cause a fresh grant to be made to such person or persons of such lands, to be holden in free and common soccage.

45. *Provided nevertheless, and be it, &c.* That such surrender and grant shall not avoid or bar any right or title to any such lands so surrendered, or any interest in the same, to which any person or persons, other than the person or persons surrendering the same, shall have been entitled, either in possession, remainder, or reversion, or otherwise, at the time of such surrender; but that every such surrender and grant shall be made subject to every such right, title, and interest, and that every such right, title, or interest, shall be as valid and effectual as if such surrender and grant had never been made.

46. *And whereas*, by an act passed in the eighteenth year of the reign of his present Majesty, entitled, "an act for removing all doubts and apprehensions concerning taxation by the parliament of Great Britain in any of the colonies, provinces, and plantations in North America, and the West Indies; and for repealing so much of an act, made in the seventh year of the reign of his present Majesty, as imposes a duty on tea imported from Great Britain into any colony or plantation in America, or relates thereto," it has been declared, "that the king and parliament of Great Britain will not impose any duty, tax, or assessment whatever, payable in any of his Majesty's colonies, provinces, and plantations, in North America, or the West Indies, except only such duties as it may be expedient to impose for the regulation of commerce, the nett produce of such duties to be always paid and applied to and for the use of the colony, province, or plantation, in which the same shall be respectively levied, in such manner as other duties collected by the authority of the respective general courts or general assemblies of such colonies, provinces, or plantations, are ordinarily paid and applied:" *And whereas* it is necessary, for the general benefit

of the British empire, that such power of regulation of commerce should continue to be exercised by his Majesty, his heirs or successors, and the parliament of Great Britain, subject nevertheless to the conditions hereinbefore recited, with respect to the application of any duties which may be imposed for that purpose; be it therefore enacted by the authority aforesaid, that nothing in this act contained shall extend, or be constructed to extend, to prevent or affect the execution of any law which hath been or shall at any time be made by his Majesty, his heirs or successors, and the parliament of Great Britain, for establishing regulations or prohibitions, or for imposing, levying, or collecting duties for the regulation of navigation, or for the regulation of the commerce to be carried on between the said two provinces, or between either of the said provinces and any other part of his Majesty's dominions, or between either of the said provinces and any foreign country or state, or for appointing and directing the payment of drawbacks of such duties so imposed, or to give to his Majesty, his heirs or successors, any power or authority, by and with the advice and consent of such legislative councils and assemblies respectively, to vary or repeal any such law or laws, or any part thereof, or in any manner to prevent or obstruct the execution thereof.

47. *Provided always, and be it, &c.* That the net produce of all duties which shall be so imposed, shall, at all times hereafter be applied to and for the use of each of the said provinces respectively, and in such manner only as shall be directed by any law or laws which may be made by his Majesty, his heirs or successors, by and with the advice and consent of the legislative council and assembly of such province.

48. *And whereas*, by reason of the distance of the said provinces from this country, and of the change to be made by this act in the government thereof, it may be necessary that there should be some interval of time between the notification of this act to the said provinces respectively, and the day of its commencement within the said provinces respectively; *Be it, &c.* That it shall and may be lawful for his Majesty, with the advice of the privy council, to fix and declare, or to authorize the governor or lieutenant governor of the province of Quebec, or the person administering the government there, to fix and declare the day of the commencement of this act within the said provinces, respectively, provided that such day shall not be later than the thirty-first day of December, in the year of our Lord one thousand seven hundred and ninety-one.

49. *And be it, &c.* That the time to be fixed by his Majesty, his heirs or successors, or under his or their authority by the governor, lieutenant governor, or person administering the government in each of the said provinces respectively, for issuing the writs of summons and election, and calling together the legislative councils and assemblies of each of the said provinces respectively, shall not be later than the thirty-first day of December, in the year of our Lord one thousand seven hundred and ninety-two.

50. *Provided always, be it, &c.* That during such interval as may happen between the commencement of this act, within the said provinces respectively, and the first meeting of the legislative council and assembly of each of the said provinces respectively, it shall and may be lawful for the governor or lieutenant governor of such province, or for the person administering the government therein, with the consent of the major part of such executive council as shall be appointed by his Majesty for the affairs of such province, to make temporary laws and ordinances for the good government, peace, and welfare of such province, in the same manner, and under the same restrictions, as such laws or ordinances might have been made by the council for the affairs of the province of Quebec, constituted by virtue of the above mentioned act of the fourteenth year of the reign of his present Majesty; and that such temporary laws or ordinances shall be valid and binding within such Province, until the expiration of six months after the legislative council and assembly of such province shall have been first assembled by virtue of and under the authority of this act; subject nevertheless to be sooner repealed or varied by any law or laws which may be made by his Majesty, his heirs or successors, by and with the advice and consent of the said legislative council and assembly.

COURT OF REQUESTS.

(3 W. 4. c. 1.)

An Act to repeal part of, amend and reduce to one Act of Parliament the several Laws now in force in this Province, for the recovery of Small Debts; and to extend the Jurisdiction of the Court of Requests within the same.

WHEREAS, it is found necessary to repeal part of, and amend and reduce to one act of parliament, the several laws now in force in this province for the recovery of small debts; and also to extend the jurisdiction of the court of requests within the same.—*Be it therefore enacted* by the King's most excellent Majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great Britain, entitled, "an act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled, 'an act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," and by the authority of the same, that from and after the first day of September next, a certain act passed in the thirty-second year of the reign of his late Majesty King George the third, entitled, "an act

for the more easy and speedy recovery of small debts;" a certain other act passed in the fifty-sixth year of his said Majesty's reign, entitled, "an act to extend the jurisdiction of the court of requests," and also so much of the sixth clause of a certain other act passed in the thirty-seventh year of his said late Majesty's reign, entitled, "an act to extend the jurisdiction and regulate the proceedings of the district court and court of requests," as applies to the said court of requests, be, and the same are hereby repealed.

2. *And be it, &c.* That from and after the first day of September next, it shall and may be lawful for any two or more commissioners, acting under and by virtue of a commission from the governor, lieutenant governor, or person administering the government of this province, who is hereby duly authorised and empowered to grant the same, under his hand and seal of office, to assemble, sit and hold a court of justice, to be called a court of requests, on the first and third Saturday of each month, at some place within their respective divisions, which divisions shall be ascertained and declared by the justices in quarter sessions assembled, or the greater part of them, at the general quarter sessions, which shall be holden first after the first day of April next; and the said commissioners for the time being, or any two or more of them, shall have power and authority, and are hereby authorised, empowered and required, to hear and determine all matters of debt or contract, when the demand doth not exceed the sum of ten pounds, and to give and pronounce such judgment and decree therein respectively, and to award execution thereupon, with such costs as are hereinafter specified, against the goods and chattles of all and every the person and persons against whom they shall give or pronounce any judgment or decree, as to them shall seem just in law or equity; and that the acts, orders, judgments and decrees of the said commissioners shall be final, between the parties thereto; *provided always*, that the commissioners hereinbefore mentioned, shall be appointed and hold their office during pleasure only.

3. *And be it, &c.* That so soon as the said divisions shall have been declared in each district as aforesaid, the same shall be numbered by the said justices in general quarter sessions assembled, beginning at number one, and continuing to the highest number of such divisions in each district, and shall be particularly described in a book to be kept for that purpose, and deposited in the office of the clerk of the peace.

4. *And be it, &c.* That the clerk of the peace in and for each district, shall transmit to the office of the governor, lieutenant governor, or person administering the government of this province, a copy of the book or list of divisions, from time to time declared

as aforesaid, within the limits of the district of which he is clerk of the peace, describing them according to their respective numbers.

5. *And be it*, &c. That from and after the first day of September next, it shall and may be lawful for every person or persons, who then or thereafter may have any debt or debts owing to him, her or them, not exceeding the sum of ten pounds currency of this province, by any person or persons whatsoever, being an inhabitant of the district within which the court shall be holden, to cause such person or persons to be summoned by a writing under the hand of the clerk of the said court, who shall be appointed as hereinafter mentioned; a copy of which shall be left with some grown person at the dwelling-house or usual place of abode of such person or persons, or by service of the same on the person of such debtor, to appear before the commissioners of the said court; and the said commissioners, after such summons as aforesaid, shall, upon proof of such copy of said summons having been so left or served, at least six days previous to the day of appearance, have full power and authority, by virtue of this act, to make or cause to be made, such acts, orders, decrees, judgments and proceedings, between such plaintiff and his, her or their debtors, defendants, touching such debt or debts, not exceeding the sum of ten pounds currency of this province, in question before them, as they shall find consistent with law or equity, and all such acts, orders, decrees, judgments and proceedings, shall be entered in a book to be kept for that purpose: *provided always*, that nothing in this act contained shall extend or be construed to extend, to authorise the summoning of any defendant or defendants before any court of requests, within any district other than that which shall be established by the magistrates in quarter sessions, as by law directed, for the division in which such defendant or defendants shall, at the time of issuing such summons, be resident: *and provided also*, that the court shall in no case give judgment against a defendant for a larger sum than forty shillings, unless it shall be proved to them that he has been personally served with the summons issued in such cause.

6. *And be it*, &c. That no barrister, attorney at law, or solicitor, being served with process of the said court, shall be allowed to plead or maintain any privilege against the process, authority, jurisdiction or judgment thereof; nor shall any barrister, attorney at law, or solicitor, have or maintain any privilege of bringing in a superior court an action upon any cause of action, which, from its nature, shall be properly cognizable in the court of requests.

7. *Provided always, and be it*, &c. That nothing in this act contained, shall extend or be construed to extend to authorise the holding plea in such court, for any gambling debt whatsoever, or

for any spirituous liquors drunk at a tavern: *provided also, and be it*, &c. that nothing in this act contained shall extend to give jurisdiction to any court of requests, to take cognizance of any cause involving the right or title to real estate.

8. *And be it*, &c. That a statement of the particulars of the demand upon which any party shall sue in the said court of requests, shall be annexed to, or endorsed on every summons taken out, and served on the defendant or defendants, with such summons; to which bill of particulars the name of the plaintiff or plaintiffs bringing the suit shall be subscribed; and to the items contained in the said bill of particulars the said plaintiff or plaintiffs shall be required to confine his, her or their proof at the trial.

9. *And be it* &c. That in order to prevent unnecessary expense, it shall and may be lawful for the said commissioners, or any one of them, at any time to give judgment, and cause the same to be entered, on the voluntary confession of any defendant, when the amount demanded does not exceed the jurisdiction of the said court; which confession may be in the form hereinafter set forth; and that judgment shall not be entered upon any such confession, in a case where no summons has been sued out by the plaintiff, until such plaintiff shall have made an affidavit to be endorsed on or annexed to the confession, declaring that the defendant, before giving that confession, did truly and bona fide owe him the amount therein specified.

10. *And be it*, &c. That in case any person or persons, shall make oath or give evidence in any cause depending before the said commissioners in the said court, whereby he, she or they, shall wilfully and corruptly forswear themselves, such person or persons shall, on conviction, suffer the pains and penalties inflicted on persons guilty of wilful and corrupt perjury.

11. *And be it*, &c. That the present courts of requests shall be and continue established until the first day of September next, and that all suits or controversies which shall remain unsettled, or which shall not have been finally disposed of in the several courts of requests in this province, shall, after the first day of September next, be transferred to the court of requests having the jurisdiction in such suit or controversy established by this act, together with all papers and proceedings relating thereto; which said unsettled suits or controversies shall be proceeded in until finally disposed of by the court of requests having jurisdiction and established by this act, in the same manner that such unsettled suits or controversies would have been proceeded in if this act had not been passed.

12. *And be it*, &c. That this act shall extend to all new districts which may be hereafter created or set apart within this province, and that the justices of the peace in such new districts shall,

at their first court of general quarter sessions to be by them holden, partition and set off the same into divisions, and do and perform all such other matters and things, in the same manner as is required by this act of the justices in the several districts now by law established.

13. And for the better discovery of the truth, and the more solemn determination of matters and causes which shall be depending in the said court: *Be it therefore*, &c. That it shall and may be lawful for the said commissioners, or any two or more of them assembled in court as aforesaid, and they are hereby authorised and empowered to administer or cause to be administered an oath or oaths to the plaintiff or plaintiffs, defendant or defendants respectively, and to such witness or witnesses as shall be produced by each party, and also to all or any of the officers of the said court, and to all other persons whatsoever, for or concerning any business relative thereunto, and to take the affirmation or affirmations of such plaintiff or plaintiffs, defendant or defendants, witness or witnesses, or other persons as aforesaid, who are or shall be of the people called Quakers, or of such other denomination of christians as are allowed to give evidence on their affirmation: *Provided always*, that although the court may for their better satisfaction and for the discovery of the truth, require the plaintiff or defendant to be examined on oath or affirmation, they shall in no case give judgment for either party in any cause for more than forty shillings, or allow or disallow any set off to a greater amount than forty shillings, on the mere oath or affirmation of the plaintiff or defendant respectively, nor without sufficient evidence to warrant such judgment, independent of such oath or affirmation.

14. *And be it*, &c. That no person or persons shall be capable of acting as a commissioner or commissioners in the execution of the power given by this act, until he or they shall respectively have taken an oath to the effect following:

"I, A. B. do swear that I will faithfully, impartially, and honestly, according to the best of my judgment, hear and determine such matters and things as shall be brought before me as a commissioner of the court of requests of division number ——, constituted and established under and by virtue of an act of the legislature of this province, entitled 'an act to repeal part of, amend and reduce to one act of parliament the several laws now in force in this province for the recovery of small debts, and to extend the jurisdiction of the court of requests within the same,' without favor or affection to either party.—So help me God."

Which oath may be administered by any justice of the peace, and shall be by such justice transmitted to the clerk of the peace

of the district in which the division for which such commissioner shall have been appointed shall be situated.

15. *And be it*, &c. That from and after the passing of this act, it shall be the duty of the commissioners of each court of requests to appoint a fit and proper person to discharge the duties of clerk, who shall be subject to be removed from his office by the commissioners, or a majority of them, for the time being, and whose duty it shall be to issue all summonses, subpœnas, executions and other process necessary to be issued out of the said court, to receive from the bailiffs all money collected under this act, and to pay the same over to the parties to whom it was decreed, and to keep a faithful record in a suitable book to be by him provided for that purpose, (which book shall be the property of the district,) of all the proceedings of the court for which he may be appointed, and which clerk shall, before he enters upon the duties of his office, take the following oath:

"I, A. B. do swear, that I will well and truly perform and fulfil all duties belonging to the office of clerk of the court of requests for the ——, and will faithfully make, enter and preserve all proceedings and remembrances of the said court, to the best of my skill and ability."—So help me God:—*Provided always*, that no clerk so appointed shall enter upon the duties of his office, until he shall have given security to the commissioners in the sum of one hundred pounds, for the proper performance of his duty—that is to say, shall enter into the covenant hereinafter mentioned, binding himself without limitation as to amount, with two or more sureties to such amounts severally as shall together made up one hundred ponnds, such sureties to be persons sufficiently responsible in the judgment of the commissioners, and it shall also be the duty of the said commissioners and they are hereby empowered to appoint one or more fit and proper persons to discharge the duties of bailiff, according to the provisions of this act; which bailiff or bailiffs shall give security in the same manner and to the same amount as the clerk of such court, and shall hold his office during the pleasure of the commissioners who, or a majority of them, may in their discretion remove such bailiff and appoint another in his stead.

16. *And be it*, &c. That the security to be given by every clerk or bailiff of any court of requests in this province, shall be in the following form, or to the like effect, that is to say:

Know all men by these presents, that we A. B. clerk, or bailiff, (as the case may be) of division number ——, in the district of ——, C. D. of the district of ——, and E. F. of ——, in the district of ——, (when more sureties here insert their names) do hereby jointly and severally covenant and promise that A. B. clerk, or bailiff, (as the case may be) of the —— division as aforesaid,

shall well and truly pay over to the person or persons entitled to the same all such monies as he shall receive by virtue of his office of clerk, or bailiff, (as the case may be) from the date of this covenant, during his continuance in office, and that he shall not within that period negligently or wilfully misconduct himself in his said office of clerk, or bailiff, (as the case may be) nevertheless it is hereby declared that no other or greater sum shall be recovered against the sureties respectively, than as follows, that is to say:

Against C. D.

Against E. F.

If other sureties add them in like manner.

In witness whereof we have hereunto set our hands and seals the —— day of ——.

L. S.
L. S.
L. S.

Signed, sealed and delivered, in presence of ——.

17. *And be it*, &c. That any person or persons who may be injured, delayed or damaged by the negligent or wilful misconduct of any clerk or bailiff of any court of requests, shall and may sue upon such covenant in his own name, and the commissioner or commissioners of such court are hereby authorised to give such judgment thereon as to them shall seem just in law and equity, not exceeding in amount the sum to which their jurisdiction is limited: *Provided always*, that nothing herein contained shall prevent the bringing any action upon such covenant in a superior court for a cause of action beyond the jurisdiction of the court of requests.

18. *And be it*, &c. That every bailiff appointed by the commissioners of any court of requests, shall attend at the sittings of such court at ten o'clock of the day on which any process or execution shall have been made returnable, and it shall and may be lawful for the said commissioners to administer, and they are hereby authorised to administer, an oath to such bailiff, to the effect following, that is to say:

"You, A. B. bailiff of division number —— of the court of requests, in the —— district, shall truly answer all such questions as shall be put to you by the court, touching the service or execution of any writ or process issued from this court which may have been placed in your hands, and returnable here this day.—So help you God."

19. *And be it*, &c. That whenever any plaintiff or plaintiffs who may hereafter bring an action in the court of requests shall fail to appear, or otherwise establish his, her, or their claim, either in his, her, or their own person or persons, or by agent, at the time

specified in the summons, it shall be the duty of said commissioners to give judgment against such plaintiff or plaintiffs for all costs attending the same, as also such sum to compensate the defendant or defendants for loss of time in attending the said court as the said commissioners (unless they shall find such failure to have occurred with the assent of, or upon a previous understanding with the defendant) may deem just and equitable.

20. *And be it*, &c. That in all actions which may hereafter be brought before the commissioners of the court of requests, if it shall be proved to the satisfaction of the court that the claim of the defendant exceeds that of the plaintiff, it shall be the duty of the said commissioners, and they are hereby required, to enter judgment in favor of the defendant for such balance as may appear to be due to the said defendant, together with costs: *Provided always*, that no sett off shall be allowed to be given in evidence before such commissioners which shall exceed the amount of ten pounds: *And provided always*, that if the plaintiff shall contest such sett off, it shall be incumbent upon the commissioners to suspend judgment, and to admit both parties on the next or other subsequent court day to produce evidence respecting the same, unless the defendant shall satisfy the commissioners, by evidence on oath, that he did, four days before the return of the summons issued against him, serve the plaintiff with a statement of the particulars of his sett off, signed by the defendant, in which case the commissioners may on the first day appointed for the trial hear and determine the same, confining the sett off to the items specified in such bill of particulars.

21. *And be it*, &c. That if any witness or witnesses necessary in any trial live out of the division where any case may be tried, but within the district in which such division is situated, then, and in such case, he, she or they may be subpœnaed in like manner as if he, she or they lived within such division, but no costs shall be allowed for such witness against the opposite party, unless the commissioners shall find that his evidence was necessary to make out the case of the party calling him.

22. *And whereas* it is customary among the people of this province to contract for the payment of a certain specified amount, or of certain sums, in produce or labor, or in some manner otherwise than in money, and doubts may arise with the commissioners acting under this act whether they can adjudge such amount or sums to be paid in money: *Be it therefore*, &c. That in any such case, after the day is past in which the produce or goods should have been delivered, or other thing should have been done, it shall be in the power of the court, if they find it just in other respects, to

give judgment for the amount in money, as if the debt or agreement had been for money.

23. *And be it*, &c. That all fines levied under the provisions of this act shall be by the commissioner or commissioners of every court of requests, paid over to any overseer or overseers of highways in the division wherein such fine or fines shall have been levied, and such overseer or overseers are hereby authorised and required to expend the same in the same manner as other monies coming into their hands to be expended on the highways, and shall render an account thereof within three months after the expenditure thereof, to the commissioner or commissioners from whom he shall have received the same, and such commissioner or commissioners are hereby required to make a return of such fines and expenditure to the ensuing quarter sessions.

24. *And be it*, &c. That if any person shall use contemptuous or insulting language to the commissioners aforesaid, while discharging the duties imposed upon them by this act, or shall in any manner disturb the proceedings of any court of requests, it shall and may be lawful for the said commissioners to imprison such offender or offenders in the common gaol of the district, for a period not exceeding six days, or impose a fine not exceeding two pounds, at the discretion of the commissioners, such fine to be levied and collected in a summary way, by warrant of distress, to be issued by the said commissioners, directing the same to be made of the goods and chattels of the offender.

25. *And be it*, &c. That when any execution shall be issued out of the said court, against any defendant or defendants, or against any plaintiff or plaintiffs, and sufficient goods and chattels of the party or parties against whom such execution shall have been issued, shall not be found within the division where such cause shall have been tried, to satisfy the same, then and in such case it shall and may be lawful to levy the amount of such execution or the balance thereof, of the goods and chattels of such party or parties, in any other division within the same district, and the clerk of the court from whence the same issued, may direct another execution for the amount due, to the bailiff of the same division, or the bailiff of the division in which the execution is to be enforced; *Provided always*, that the bailiff of the division in which judgment was entered, shall not be compelled to go out of his division, nor shall the cost of travelling from one division to another, be taxed against the person against whom the execution shall be issued.

26. *And be it*, &c. That when any judgment in the said court shall exceed the sum of forty shillings, it shall not be lawful for the said commissioners to issue any execution thereon, until the

expiration of forty days from the time of giving and recording such judgment, unless the party obtaining judgment shall make it appear by his own oath, or other testimony, to the satisfaction of the commissioners, that he will be in danger of losing the debt in consequence of such delay, in which case, and also in the case of any judgment against a clerk or bailiff, for monies received by him and not paid over, it shall be lawful for the said commissioners, or any one of them, to order the issue of execution at such time as he may think fit.

27. *And be it, &c.* That no bailiff shall proceed to the sale of any effects taken by virtue of any writ of execution issued by a court of requests, unless public notice in writing be given at least eight days before such sale, at the most public place in the town, or township where such effects may have been taken in execution, of the time and place where such effects are to be exposed to sale.

28. *And be it, &c.* That if any action shall hereafter be brought in any of the superior courts, which might have been tried in the court of requests, no higher costs shall be taxed to the plaintiff than would have been recoverable in the court of requests, unless it shall be shewn to the court, or to a judge thereof, in vacation, that from the nature of the plaintiff's evidence, or the situation of his witnesses, he could not have proved his case in the court of requests, or unless in the action in the superior court, the defendant shall have been arrested.

29. *And be it, &c.* That whenever either of the parties to any cause shall apply for an adjournment, in consequence of the absence of some material witness, or for other sufficient reasons shown upon oath to the satisfaction of the court, it shall be the duty of the commissioners to grant the application upon the payment of reasonable costs by the party applying for such adjournment.

30. *And be it, &c.* That the several fees and sums of money hereinafter limited and expressed, and no more shall be taken.

Commissioner's Fees.

For every final judgment—two shillings.

Clerk's Fees.

For recording judgment—sixpence.

For every summons or subpœna—sixpence.

For every copy of judgment (if demanded)—one shilling.

For every execution—one shilling.

Bailiff's Fees.

For serving every summons or subpœna within one mile of the clerk's house—one shilling.

For every mile in travelling to execute process, or execution, where the distance exceeds one mile—four pence.

For serving a writ of execution, seizing and selling effects, and making return, if the judgment does not exceed five pounds —two shillings and six pence.

Ditto, ditto, if judgment exceeds £5, in like proportion.

The allowance to be paid to all and every of the witnesses, to be left to the discretion of the commissioners, but not to exceed 2s. 6d. per day, to each.

31. *And be it, &c.* That the following forms may be used by the commissioners of the court of requests.

In the Court of Requests.

——— District, } plaintiff,
Division, No. — } defendant.
to wit. }

To the defendant.

You are hereby summoned and required to be and appear before the commissioners of his Majesty's court of requests, to be held at ——— in the township of ——— by eleven o'clock in the forenoon, of Saturday the ——— day of ——— to answer the demand of ——— for ——— pounds ——— shillings and ——— pence of lawful money of this province, which he claims from you, and a statement of which claim is hereunto annexed.—Herein fail not, as judgment will be given against you for default.

Witness ——— A. B. clerk of the said court, this ——— day of ———.

In the Court of Requests.

——— District, } To
Division, No. — }
to wit. }

You are hereby summoned and required to be and appear before the commissioners of his Majesty's court of requests to be held at ——— in the town of ——— on Saturday the ——— day of ——— at ——— o'clock in the forenoon, to testify the truth according to your knowledge in a certain cause then and there to be tried, between ——— plaintiff, and ———

defendant, on the part of the ———. Herein fail not at your peril.

Witness ——— A. B. clerk of the said court, this ——— day of ——— in the year of our Lord one thousand eight hundred and thirty ———.

To A. B. Bailiff.

——— District, } You are hereby authorised and required to
Division, No. — } make of the goods and chattels of ——— in
to wit. } the said district, the sum of ——— provincial currency, to satisfy a judgment given by the court of requests, held in division, number ——— in the said district, on Saturday the ——— day of ——— at the suit of ——— in the plea of debt heard against the said ——— together with the sum of ——— being the costs of said suit; and should there be any overplus after deducting the legal expenses of the seizure and sale, you are to return the same to the said ——— and you are to certify to the said court on Saturday the ——— day of ——— what you shall have done in the execution hereof. Herein fail not.

Witness ——— A. B. clerk of said court.

Debt.....
Costs..... }
Bailiff's Fees.....

In the Court of Requests.

I, ——— of the town of ——— in the ——— district, do hereby acknowledge that I am justly indebted to ——— in the sum of ——— being the amount due to ——— on a note, account, or contract, (as the case may be) and I do consent that judgment be forthwith entered against me, for the said sum with the costs, but no execution to be issued until the ——— day of ——— next.

Witness

(Form of the Oath to be Administered to a Witness.)

"The evidence you shall give to this court, touching the matter in question, shall be the truth, the whole truth, and nothing but the truth. So help you God."

ADDENDA

TO THE

PRINCIPAL MATTERS CONTAINED IN THIS WORK.

AGRICULTURAL SOCIETIES.

By the 5 *W.* 4. *c.* 11. The act of the 11 *G.* 4. *c.* 10. (See ante. p. 10.) is continued for one year.

APPRENTICES.

It has been decided and settled, that the justices have power to order restitution of the premium received with the apprentice, or such part of it as they may think fit; as an incident to their authority to discharge. 1 *Saund.* 313. *n.* 3. *Cites.* 1. *Salk.* 67. 68. 2 *Salk.* 491. *S. C.*—*Skin.* 108.—1 *Bott.* 571. 576. *acc.*—1 *Stra.* 79. *contra*, and see the proceedings in 2 *Barnard, K. B.* 244. 296. and *Chitty* on *App. Laws*, 107.

DOWER.

By the 50. *G.* 3. *c.* 10. It shall be lawful for any person entitled to dower, to appear before the judge of the district court, or the chairman of the quarter sessions of the district in which the party resides, and being privately examined by the said judge or chairman, touching her consent to be barred of dower, it shall and may be lawful for the said judge, or chairman, to certify the same in like manner as the same may at present be certified by the chief justice, or any justice of the court of King's bench, and the said certificate shall have the same force and effect and be as valid in law as if the person had been examined by the chief justice or justice, or court of quarter sessions, any law or usage to the contrary in anywise notwithstanding. § 2. Fee for the certificate, 5*s*. See also 3 *W.* 4. *c.* 10. ante. p. 156. title "Dower."

IMPRISONMENT FOR DEBT.

By *stat.* 5. *W.* 4. *c.* 3. No person shall be held to bail for any debt under £10 by the King's bench, or district court, after the

1st of June next. § 2. No person shall be taken in executio costs only, nor upon any judgment where the debt shall not am to £10 or upwards, exclusive of costs. § 3. Any person in cution upon any judgment, for any debt or damages, not exc ing £20, exclusive of costs, and who shall have lain in prison t calendar months, or been upon the gaol limits for twelve cale months, may, upon application to the court in term time, ol his discharge, his property still remaining liable to the deb § 4. Any person in execution upon any judgment, for any or damages, exceeding £20, exclusive of costs, and who shall l lain in prison thereupon for six calendar months before the plication for his discharge, when the debt shall not exceed £ or 12 calendar months, when the debt shall exceed £100, n upon giving thirty days notice, in writing, to the opposite pa or his attorney, of his intention to make such application, a for his discharge in term time, to the court from whence execu issued. § 5. The court may examine into the matter, and i in its discretion discharge the debtor. § 8. Any person who s assign, remove, conceal, or dispose of any of his property, intent to defraud his creditors, and any person who shall rec such property with such intent, shall, upon conviction, be deei guilty of a misdemeanor, and such offence may be tried before court of oyer and terminer, or general gaol delivery, and ma punished by fine or imprisonment, not exceeding £100, o months imprisonment. § 9. Act to continue in force for four ye

INDIANS.

By *5 W. 4. c.* 9. It is enacted, that from and after the fifth of January next, it shall not be lawful for any person to sell, l ter, exchange, or give to any Indian man, woman, or child, w in this province, any kind of spirituous liquors, in any sh manner or way, or cause, or procure the same, to be done for purpose whatever,-under the pains and penalties of this act. It shall be lawful for any justice of the peace of any district wl any offence against this act shall be committed, upon the testim of one or more witness or witnesses, to fine the offender for ev offence, in a sum not exceeding £5, which, together with costs attending the same, shall be levied, collected, and applie the same manner as fines and penalties are now collected and plied, under the act for the summary punishment of petty offen But this act not to extend to any medical man furnishing to Indian spirituous liquor in case of sickness, or under the directi of any medical man. § 3. Act to continue in force four years

LANDLORD AND TENANT.

By *stat.* 4. *W.* 4. *c.* 1. It shall be lawful for any landlord, whose tenant shall, after the expiration of any tenancy (by parol or writing) wrongfully refuse, upon demand made in writing, to go out of possession, to apply to the court of King's bench in term, or to a judge in vacation, upon affidavit, who shall order a writ to issue for summoning a jury of twelve men, before the commissioner named to determine the matter; and if in favor of the landlord, a writ of possession shall be issued.

LINE FENCES AND WATER COURSES.

An Act to regulate Line Fences and Water Courses, and to repeal so much of an Act passed in the thirty-third year of the reign of His late Majesty King George the third, entitled, "An Act to provide for the nomination and appointment of Parish and Town Officers within this Province," as relates to the office of Fence Viewers being discharged by Overseers of Highways and Roads.

(4 W. 4. c. 12.)

Whereas much difficulty and inconvenience are experienced and many disputes arise from the want of some provincial enactment, by which each party interested in the making or repairing any division or line fence, may be compelled to make or repair, or pay for making or repairing a fair and just proportion of such fence: *Be it therefore enacted &c.* that it shall and may be lawful for the inhabitant householders of each and every township in this province, at their annual town meeting for the election of township officers, to choose from among the inhabitants of the said township, in the same manner as by law other township officers are chosen, not less than three or more than eighteen fit and discreet persons to serve the office of fence viewers, who shall perform the duties hereinafter prescribed to fence viewers, and who shall take the same oath of office, and in the same manner which persons chosen to other township offices are or may be by law required to do, and be liable to the same penalties for neglect or refusal to take said oath of office, to which persons chosen to other township offices and neglecting or refusing to take the oath of office are or may be by law liable.

2. *And be it, &c.* That each of the parties occupying adjoining tracts of land shall keep up, make and repair, a fair and just proportion of the division or line fence between their several tracts of land; and that where there shall be a dispute between the parties, as to the commencement or extent of the part of the said division or line fence which either party may claim or refuse to make or repair, it shall and may be lawful for either party to submit the same to the determination and award of three fence viewers, which fence viewers are hereby authorised and required, upon being duly notified by either party in such

case, to attend at the time and place stated in such notice, and after being satisfied that the other party or parties in the case have been duly notified to appear at the time and place, to proceed to examine the premises; and such fence viewers, or any two of them, shall determine any and every dispute in the matter aforesaid, between the said parties; and the award and determination of such fence viewers or any two of them, on the matters aforesaid, shall be binding on the parties as far as concerns the making or repairing of such division or line fence, and from thenceforth the occupier or occupiers of the said tracts or parcels of land shall respectively make and repair, and keep in repair, that part of such division or line fence which shall have been assigned in such award or determination to the occupier or occupiers of such tract or parcel of land, which determination and award shall be made in writing, and signed by such fence viewers, or a majority of them, and filed in the town clerk's office, and a copy of the same made out and given to each of the parties; *provided always, nevertheless*, that when by reason of any material change of circumstances in respect to the improvement and occupation of adjacent lots or parcels of land, an award which has been made under this act shall cease in the opinion of either of the parties to be equitable between them, it shall be in the power of either to obtain another award of fence viewers, by the same mode of proceeding as is hereinbefore directed; and that if the fence viewers who shall have been called upon to make such subsequent award, shall find no reason for making an alteration, the whole cost of such reference shall be borne by the party at whose instance it shall have been made.

3. *And be it, &c.* That if any person or persons who may be in the occupation of any tract or parcel of land shall neglect or refuse to make or repair (as the case may be) an equal or just proportion of the division or line fence between such tract or parcel of land and the adjoining tract or parcel of land, for a period of thirty days after being required, by a demand in writing, by the person or persons occupying such adjoining tract or parcel of land, or after the award of the fence viewers as aforesaid, to make or repair such equal or just proportion of the division or line fence; or if the party making such demand shall for such period neglect or refuse to make or repair an equal or just proportion of the division or line fence, it shall and may be lawful for either of the said parties, after first completing his own proportion of such fence, to make or repair in a substantial manner, and of good sound materials, the whole or any part of the said division or line fence which ought to have been by the other party made or repaired, and to recover in the manner hereinafter mentioned, of the person or persons who may have neglected or refused in manner aforesaid, to make or repair such proportion of the division or line fence, the just and full value of such proportion, not exceeding the sum of two shillings and six pence per rod, to be ascertained and determined in the manner hereinafter provided: *provided always*, that any fence coming within the meaning and intent of the resolution, resolving what shall be considered to be a lawful fence for that year, entered into by the inhabitant householders at their annual township meeting, shall be considered

by all fence viewers to be a lawful fence; and when the householders as aforesaid shall neglect or refuse to decide by such resolution what shall be a lawful fence, then and in that case it shall be lawful for such fence viewers, when called upon, to exercise their own judgment, and decide what they consider to be a lawful fence.

4. *And be it, &c.* That it shall and may be lawful for any commissioner of the court of requests for the division in which such fence may be situated, and he is hereby required, upon the demand of any person or persons, to issue a summons under his hand and seal, directed to three fence viewers (by their proper names) of the township in which such fence is situated, requiring them to attend on the day and at the hour herein mentioned, and at a place therein mentioned, to view such fence, and to appraise the same; also, to issue his summons to the person or persons so having neglected or refused to make or repair such proportion of the division or line fence, who shall thenceforth be considered as the defendant or defendants in the case, requiring him or them to appear at the same time and place, to shew cause why the person or persons claiming payment as aforesaid, who shall thenceforth be considered as the plaintiff or plaintiffs in the case, should not recover the same.

5. *And be it, &c.* That such fence viewers, upon being personally served at least eight days previously with such summons, at the time and place therein mentioned, and after having duly examined the fence and received evidence, which, if required by either party, or if the said fence viewers shall think it expedient, shall be given under oath, they, or any two of them, shall determine whether the said plaintiff is entitled to recover any, and if any, what sum, from the said defendant or defendants under the provisions of this act; and in all cases where the commencement or extent of the part of such division or line fence which each party should make or repair, has not been determined by the award of fence viewers as aforesaid, the said fence viewers, or any two of them, shall determine the same, which determination shall be final and binding on the occupiers of the said tracts or parcels of land, and have the same effect as if it had been made by three fence viewers in the manner aforesaid, and shall report their determination upon the matters aforesaid in writing, under their hands, to the said commissioner of the court of requests, by whom the said summons shall have been issued, and shall also, in all cases where they determine that the said plaintiff is entitled to recover any thing from the said defendant or defendants, state what distance of fence they have determined that the said defendant or defendants should have made or repaired.

6. *And be it, &c.* That the said fence viewers, if they shall be required by either party, before they shall have made a report as aforesaid of their determination to the said commissioner of the court of requests, shall give to such party requiring the same, a true copy of their said determination.

7. *And be it, &c.* That if either of the said parties shall desire to procure the attendance of any person to give evidence before such fence viewers, it shall and may be lawful for the commissioner of the court of requests, by whom any summons shall have been issued as aforesaid to

such fence viewers, to issue, upon the application of either of the said parties, a summons to any person, to attend as a witness before the said fence viewers, at the time and place mentioned in the said summons to the fence viewers, and that the said fence viewers, when met as aforesaid, at the time and place mentioned in the summons, shall be and are hereby authorised, whenever it shall be desired by either party, or they shall think it proper, to administer an oath to any person, except the parties or persons interested, whose evidence they shall wish to take, which oath shall be in the following form:

"You do solemnly swear, that you will true answer make to such questions as may be asked of you by either of the fence viewers now here assembled, touching the matters which they are now to examine and determine. So help you God."

And if any person giving evidence as aforesaid under oath, shall be guilty of false swearing, he shall be deemed guilty of perjury, and upon conviction thereof, shall be liable to the same punishment and disabilities that persons convicted of perjury in other cases are now by law liable.

8. *And be it, &c.* That the commissioner of the court of requests, to whom the determination of the fence viewers shall be returned as aforesaid, shall cause the same to be copied into a book kept for that purpose by the court of requests for the division to which he belongs, and thereupon the said court of requests shall issue an execution against the goods and chattels of the said defendant or defendants, in the same manner as if the party to whom it is due had received a judgment in the court of requests for the sum which the said fence viewers shall have determined as aforesaid he was entitled to receive, and also (if the said sum amounts to more than two pounds, but not otherwise) for the costs he may have necessarily incurred in the recovery thereof, and when such sum shall not amount as aforesaid to more than two pounds, then the other party shall be entitled to an execution from said court of requests against the goods and chattels of the plaintiff or plaintiffs, for the costs he may necessarily have been put to in opposing the plaintiff's claim, the amount of the said costs in either case to be determined by the said court of requests: *provided*, that when the said sum shall amount to more than two shillings and six pence per rod for the length of fence which such fence viewers shall have determined such defendant or defendants ought to have made or repaired, the said plaintiff shall be entitled to recover and have execution for only the sum of two shillings and six pence per rod, as aforesaid, and his costs: *provided also*, that no such writ of execution shall be issued until after the expiration of forty days from the time of such determination.

9. *And be it, &c.* That all and every of such fence viewers shall be entitled to receive the sum of five shillings for every day they are necessarily engaged in discharging the duties imposed upon them by this act, and so in proportion for any time less than one day, and no more; and that every witness who shall be summoned, and attend as aforesaid before such fence viewers, shall be entitled to receive two

shillings and six pence per day; and every commissioner of the court of requests, and bailiff, shall be entitled to receive, for any service performed under this act, the same fees which they are respectively entitled to receive for similar services in the court of requests.

10. *And be it, &c.* That any fence viewers, legally holding the office of fence viewers, who shall neglect or refuse to perform the duties of his office shall forfeit, for every neglect, to any person who may sue for the same, a sum not exceeding forty shillings, with costs of suit, to be recovered upon information and complaint before any one of the justices of the peace for the district in which such fence viewer was chosen, and to be levied by distress under a warrant issued by such justice.

11. *And be it, &c.* That when any party shall cease to improve his land, or shall lay his enclosure before under improvement in common, he shall not have a right to take away any part of the partition fence that to him belongs, adjoining to the next enclosure that is improved or occupied; *provided* the party occupying the lands adjoining the same will allow and pay therefor so much as the fence viewers, or a majority of them, shall, in writing, determine to be the reasonable value thereof; and whenever any lands which have laid unimproved and in common shall be afterwards enclosed or improved, the occupier or occupiers thereof shall pay for their fair or just proportion of the division or line fence standing upon the divisional line between the same land and the land of the enclosure of any other occupant or proprietor; the value thereof to be ascertained and set forth in writing by three fence viewers, in case the parties shall not agree among themselves, and the amount of said value to be recovered according to the proportions so estimated, in the same manner and form as hereinbefore provided respecting the making and keeping in repair division or line fences.

12. *And be it, &c.* That in no case shall any person be authorised to take away any part of the partition fence that to him belongs, adjoining to the next enclosure that is improved or occupied, unless the party occupying the lands adjoining the same refuse to pay for the same as aforesaid, nor without first giving due notice to such party for at least twelve months previously to the removal of the same.

13. *And be it, &c.* That when a water fence, or a fence running into the water, is necessary to be made, the same shall be done in equal parts, unless by the parties otherwise agreed; and in case either party shall refuse or neglect to make or maintain the share to such party belonging, similar proceedings shall or may be had as in other cases of the like kind respecting fences out of the water, in this act mentioned.

14. *And be it, &c.* That when lands belonging to or occupied by different persons, and subject to be fenced and bounded upon, or divided from each other by any brook, pond or creek, which of itself is not a sufficient fence, in such case, if the parties disagree, the same may be submitted to three fence viewers, as heretofore provided in cases of disagreement; and if, in the opinion of such fence viewers,

such brook, river, pond or creek, is not of itself a sufficient fence, and that it is impracticable to fence at the true boundary line, they shall judge and determine how or on which side thereof the fence shall be set up and maintained, or whether partly on one side and partly on the other side, as to them shall appear just, and reduce such their determination to writing, as heretofore provided in other cases; and if either of the parties shall refuse or neglect to make up and maintain the part of the fence to such party belonging, according to the fence viewers' determination in writing as aforesaid, the same may be done and performed as is in this act before provided in other cases, and the delinquent party shall be subject to the same costs and charges, and to be recovered in like manner.

15. *And be it, &c.* That in all cases where any party shall desire to have a lane between his land and any adjoining tract or parcel of land, and shall make the fence on one side of the said lane on his own land, he shall not be obliged to make or repair, or pay for making or repairing any part of the fence on the other side of such lane, any thing herein contained to the contrary in any wise notwithstanding.

16. *And whereas* it is expedient to provide for the opening of water courses in this province: *Be it therefore &c.* that in all cases when it shall be the joint interest of parties, resident within this province, to open a ditch or water course for the purpose of letting off surplus water from swamps or sunken miry lands, in order to enable the owners or occupiers of such swampy or sunken land to cultivate or improve the same, it shall be the duty of such several parties to open a just and fair share of such ditch or water course, in proportion to the several interests that such parties may have in the same; and in cases where a dispute shall or may arise as to the part, width, depth or extent, that any party so interested ought to open or make, the same may be referred to three fence viewers, in the same way and manner as is heretofore by this act provided in cases of disputes between parties relative to line or division fences; and it shall be the duty of such fence viewers, to whom such matters shall be referred, to divide or apportion such ditch or water course among the several parties, as in the opinion of such fence viewers, shall be a just and equitable proportion, having due regard to the interest each of the parties shall have in the opening of such ditch or water course; and the fence viewers shall at the same time decide what length of time shall be allowed to each of the parties to open his or her share of such ditch, and the determination or award of such fence viewers shall be made in the same form, and signed and executed in the same manner, and have the same effect in regard to ditches or water courses, as is provided by this act in regard to line or division fences.

17. *And be it, &c.* That when it shall appear to such fence viewers that the owner or occupier of any tract or parcel of land is not sufficiently interested in the opening of such ditch to make him a party, and at the same time that it is necessary that such ditch should be continued across his land by the other party or parties, at their own expense, they may award the same in manner and form aforesaid, and upon

such award, such party or parties may lawfully, and without molestation, open such ditch or water course across such land as aforesaid, at their own expense.

18. *And be it, &c.* That if any party shall neglect or refuse to open, or make and keep open his share or proportion allotted or awarded to him by such fence viewers as aforesaid, within the time allowed by such fence viewers, either of the other parties may, after first completing his own share or proportion allotted to him in manner aforesaid, open the share or proportion allotted to such party neglecting or refusing to open the same, and such party so opening such other parties' share shall be entitled to recover the value thereof from the party so neglecting or refusing to open his share or proportion, in the same way and manner and form as is in this act provided, relative to line and division fences.

19. *And be it, &c.* That all fines levied under the provisions of this act shall be by the justice or justices of the peace by whom the same may be imposed and collected, paid over to the overseer or overseers of highways, in the division wherein such fine or fines shall have been levied; and such overseer or overseers are hereby authorised and required to expend the same in the same manner as other monies coming to their hands to be expended on the highways, and shall render an account thereof within three months after expenditure thereof, to the justices in quarter sessions assembled.

20. *And be it, &c.* That this act shall be and continue in force for four years, and from thence to the end of the next ensuing session of parliament, and no longer.

21. *And be it, &c.* That so much of the fifth clause of an act of the parliament of this province, passed in the thirty-third year of the reign of King George the third, entitled, "an act to provide for the nomination and appointment of parish and town officers within this province," as provides that persons chosen to be overseers of highways and roads, shall also serve the office of fence viewers, shall be, and the same is hereby repealed; and that whatever duties that were before the passing of this act directed to be performed by such overseers of highways and roads, in relation to fences, shall hereafter be performed by the persons chosen to be fence viewers, under the authority of this act.

PUBLIC HEALH.

By *5 W.* 4. *c.* 10. Intituled an act to promote the public health, and to guard against infectious diseases in this province, the lieutenant governor, by and with the advice of the executive council, may appoint three or more persons in each town, to act as health officers. § 2. Any two of them may, in the day time, enter upon the premises of persons resident within the limits of the town, &c. and examine the same, and order the proprietor or occupant to cleanse the same, and remove whatsoever shall be found there dangerous to public health; and in case of refusal or neg-

lect, said health officers may, with the assistance of the constables and peace officers, and such other persons as they may think fit, enter on the premises and remove the same. § 3. The lieutenant governor and executive council, may also make rules and regulations, concerning the entry and departure of boats and vessels, at the different ports or other places, and the cargoes and passengers. § 4. Any person disobeying or resisting any lawful order of the health officers, or any two of them, or wilfully violating any rule or regulation, or obstructing the officers in the execution of their duty, on conviction before two justices, where such offender shall reside, shall forfeit and pay not less than 20*s*. nor more than £20, to be levied by seizure and sale of the offender's goods by warrant of the convicting justices, to be paid to the receiver general, to the use of the province. § 5. This act to remain in force one year, and to the end of the next session. § 6. In all cases in which disease of a malignant and fatal character, shall be discovered to exist in any dwelling-house, &c. situate in an unhealthy situation, or be in a neglected and filthy state, or inhabited by too many persons, the board of health, or a majority, may, at the expense of the board, compel the inhabitants to remove therefrom, and place them in sheds or tents, or other good shelter, in some more salubrious situation, until the cleansing and purification of such dwelling-house, &c. has been effected. This act to relate to all houses and out-houses, situate within one mile of any city, town or village.

STANDARD MEASURE.

By *5 W.* 4. *c.* 7. It is enacted, that after the passing of this act, the following rates shall be the standard weight, which in all cases shall be allowed to be equal to the Winchester bushel, viz :

Wheat,.....sixty pounds,
Indian corn,.....fifty-six pounds,
Rye,.....fifty-six pounds,
Peas,.....sixty pounds,
Barley,.....forty-eight pounds,
Oats,.....thirty-four pounds,
Beans,.....fifty pounds,
Timothy and clover seeds,.....sixty pounds.

Povided always, That the effect of any contract, made before the passing of this act, shall not be varied by any thing herein contained. § 2. Every sale or delivery of any description of grain or pulse, in this act mentioned, which shall be hereafter made, and in every contract for the sale and delivery of any such grain or pulse, the bushel shall be taken and intended to mean the

weight of a bushel, as regulated by this act, and not a bushel in measure, or according to any greater or less weight, unless the contrary shall be expressed.

TOWN MEMBERS' WAGES.

By *5 W.* 4. *c.* 6 Members for towns shall be entitled to wages during their attendance in parliament, not exceeding 10*s.* per day.

TOWNSHIP MEETINGS, &c.

By *5 W.* 4. *c.* 8. Intituled, an act to reduce to one act of parliament, the several laws relative to the appointment and duties of township officers in this province, except an act passed in the 4th year of *Wm.* the 4th, entitled an act to regulate line fences and water courses, &c. (see ante. p. 3. addenda) the following acts are repealed, viz :—33 *G.* 3. *c.* 2. Except the tenth clause thereof, (see ante. p. 447.) ; the 34. *G.* 3. *c.* 8. ; the 1. 2. and 3. clauses of the 43 *G.* 3. *c.* 10. ; and the 44 *G.* 3. *c.* 4. ; all relating to cattle running at large, (ante. p. 92.) ; the 45. *G.* 3. *c.* 6. relative to the appointment of overseers of highways ; the 46 *G.* 3. *c.* 6. (ante. p. 449.) ; the 48 *G.* 3. *c.* 14. (ante. p. 449.) ; the 6. 7. 11. 13. 14. 15. 16. 17. 18. 19. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. clauses of the 50 *G.* 3. *c.* (ante p. 201. 202. 203.) ; the 51 *G.* 3. *c.* 8. (ante. p. 50.) ; the 53 *G.* 3. *c.* 9. (ante. p. 450.) ; the 56 *G.* 3. *c.* 39. (ante. 204.) ; the 57 *G.* 3. *c.* 7. (ante. 449. 450.) ; the 59 *G.* 3. *c.* 8. relative to the appointment of township officers ; the 3. 6. 9. 10. 11. and 16. clauses of the 59 *G.* 3. *c.* 7. (ante. p. 204.) ; the 4 *G.* 4. *c.* 7. (ante. p. 449.) ; the 4. 5. 8. clauses of the 4 *G.* 4. *c.* 10. (ante. p. 206.) ; the 11 *G.* 4. *c.* 7. (ante. p. 340.) ; the 4 *W.* 4. *c.* 11. (ante. p. —.) *Provided*, that any prior acts or enactments repealed by any of the before mentioned acts, shall remain repealed.

Town Meeting.—The township clerk for the time in each township, shall assemble the inhabitants or freeholders liable to pay any assessment or rate of such township, on the first Monday in January, at the hour of ten o'clock in the forenoon, at such place as shall have been agreed upon by the previous township meeting, or if no place agreed upon, then at the place where such previous meeting was held. The township meetings for the year next ensuing the passing of this act, to be holden at the places of the last meetings ; and the township clerk shall affix a notice of the time and place of such meeting in three of the most public places in the township, and the inhabitants so assembled, shall

choose a chairman, and until such chairman is chosen, the township clerk shall preside. § 2.

Qualification.—No person shall be qualified to vote at any township meeting, unless he be a householder or freeholder in such township, of the age of 21 years, and all matters and questions at such meetings shall be decided by a majority of votes then present. § 3.

Any unqualified person voting, shall be liable to a penalty of not less than 5*s.* nor more than 20*s.*, to be recovered and applied as other fines under this act, provided the complaint be made within three months, unless it shall appear to the court, that the vote was not objected to, and that the offence was committed through ignorance. § 4.

In case of neglect by the town clerk to convene the meeting, the inhabitants may nevertheless lawfully meet, and transact business. § 5.

Choosing Officers.—At such meeting, the inhabitant householders and freeholders shall choose a clerk, also three proper persons to be commissioners, one assessor, one collector, *any* number to serve as overseers of highways, roads and bridges, and any number to serve as pound-keepers as they shall deem expedient for the year: but no person shall be liable to serve any township office for two years in succession, except in case of neglect or refusal to appoint particular officers for the year ; in such case, the officers who shall not be relieved by the appointment of successors, shall continue in office for the year; but no person shall be liable to serve who does not reside in the township. § 6.

New Townships.—Townships not having before held any meetings, may hold such meetings when such townships contain thirty inhabitant householders or freeholders;—townships not containing that number, shall be attached to the adjacent township containing the smallest number of inhabitants, authorised to hold a township meeting, and the officers appointed at such meeting, shall serve for both townships. § 7.

In any township which has not before held any meeting, a public notice, signed by a majority of the inhabitant householders and freeholders may be affixed in at least three of the most conspicuous places in the township fifteen days previously, stating that a public meeting will be held on the first Monday in January, at some certain place in the township, for the appointment of township officers for the year. § 8.

Cattle and Fences, &c.—The inhabitant householders and freeholders at township meetings, may determine and order in what manner and at what periods, and what description of horned cattle, horses, sheep and other animals (not expressly provided

for by law) shall be allowed to run at large, or be restrained from so doing, within the township, for the year; also the fine upon the owners of cattle running at large, contrary thereto, and make such rules and regulations relative to pits, precipices and deep waters or other places, dangerous to travellers, or the destruction of weeds detrimental to husbandry; the height and description of fences; and such other matters connected with the same, as may tend to promote the peace and welfare of the township. § 9.

Township Clerk.—It shall be the duty of the clerk appointed as aforesaid, for any township, to record all such matters as shall be lawfully transacted at such meeting, and all other matters relating to the township it shall be his duty to record, such record and all other records, papers, monies unexpended, and property of the township in his hands, shall be faithfully kept and preserved, and by him delivered to his successor. § 10.

Every township clerk shall make out two copies of the proceedings of the meeting at which he was appointed, one of which he shall post up in a conspicuous manner at the place where such meeting was held, and transmit the other to the clerk of the peace to be filed in his office as a record, and open to inspection, on payment of one shilling for each search. § 11.

Notices of Appointments.—The township clerk shall cause the several township officers to be served with a notice of their appointment, signed by his hand, within ten days after their appointment, requiring them to take the oath (or affirmation) of office, which notice may be in the following form. § 12.

SIR:

You are hereby notified, that you were appointed on the —— day of —— to the office of —— and you are required to take the oath, or affirmation of office for the said office according to law.

(Signed) A. B.
Township Clerk.

To C. D.

Dated, &c.

Oath of Office.—The township clerk is authorised to administer the oath of office as follows. § 13.

You A. B. do solemnly swear (or affirm, as the case may be) that you will faithfully and diligently perform the duties of the office of —— for this present year, according to law, and the best of your abilities. So help you God.

Overseers of highways to take the following oath, a copy of which shall be given to them by the township clerk. § 14.

You, A. B. do promise and swear, (or affirm, as the case may be) that you will faithfully, diligently and impartially perform the duty of overseer of highways, and that you will require each and

every person under your charge, (not having compounded for his statute labor) faithfully and diligently to perform the same according to law, either in person, or by an able bodied substitute, and will report every defaulter to the commissioners, and perform all other matters and things pertaining to your office, as the law directs. So help you God.

The township clerk shall record all the oaths, and report to the commissioners at each and every meeting of the board, all defaulters in taking such oaths. § 15.

Township Clerk's Fee.—The township clerk entitled to *5s.* a day from the treasurer of the district, for every day that he may be necessarily employed in the duties of his office, which, with fees allowed by this act, the treasurer is required to pay on demand, upon affidavit being made by such township clerk before any justice of the peace, that such demand is just and true. § 16.

Township clerk authorised to administer any oath or affirmation, authorised or required to be taken by this act. § 17.

Assessor's duty.—The assessor shall demand and receive from every rateable inhabitant in the township a list of all the rateable personal property in his, her or their possession *in the province*, and all the lands, tenements, or other real estate in his, her or their possession within the township, specifying the number of the lot or lots, the number of the concession or concessions in which the same is or are situated, or otherwise particularly describing the same, and also the number of acres cultivated or uncultivated in each lot or parcel of land; which list shall be taken between the first Monday in February and the court of general quarter sessions of the district, which shall be holden next after the first day of March in every year, and shall make a return within the time aforesaid, duly attested under oath (or affirmation) before the clerk of the peace for the district, or township clerk, of all the rateable inhabitants, with a true list of all their rateable property, specifying the particulars above mentioned, and shall in like manner insert his own rateable property therein, at the foot of which, he shall subscribe his name, and shall deliver such return to the clerk of the peace, to be laid before the quarter sessions, and shall within the time aforesaid, put up a correct copy thereof for public inspection at the place where the last township meeting was held, and the assessor shall report to the commissioners the names of all such persons as he conceives have given in false lists, or refused or neglected to give any list, in order that such offenders may be dealt with according to law, at least fourteen days before returning his roll to the clerk of the peace. § 18.

Census.—The assessor is also required to demand and receive from every inhabitant householder or head of a family in his town-

ship, a true and correct list of the number of persons composing such family, male and female, and their respective ages: also all deaf and dumb and insane persons, including all persons employed by or resident with such householder or head of a family, which list shall or may be given in the following form:

Names of Heads of Families.	Number in each Family.				Deaf & Dumb.	Insane.
	Males.		Females.			
	Under 16.	Over 16.	Under 16	Over 16.		

And if such householder or head of a family shall refuse or neglect to give a true and correct list to the assessor, he shall be liable to the same penalty as persons refusing or neglecting to give in a true list of their rateable property, and to be recovered in the same way. § 19.

Every assessor shall subscribe such list, and shall transmit the same to the clerk of the peace before the said sittings of the quarter sessions, verified upon oath or affirmation, before the township clerk or clerk of the peace to be a true list. § 20.

The clerk of the peace shall make out a general return of the population of his district, from the assessor's returns for the year, and transmit the same to the lieutenant governor, on or before the 1st of July in every year, and if such return shall not be complete, he shall send in a return of such townships as may be deficient as soon as practicable after he shall be enabled to do so by the assessor's returns. § 21.

Assessor's Fees.—The assessors shall be entitled to demand from the treasurer of the district the following fees, *per cent.*, viz:

	£	s.	d.
If the assessment of the rate of one penny in the pound does not amount to £50, he shall receive.....	7	0	0
If above £50 and under £100.....	6	10	0
If above 100 and under 150.....	6	0	0
If above 150 and under 200.....	5	5	0
If above 200 and under 250.....	4	15	0
If above 250 and under 300.....	4	5	0
If above 300 and under 350.....	4	0	0
If above 350.....	3	10	0

Collector's duty.—It shall be the duty of the collector, after having received a certified copy from the clerk of the peace of the

assessment roll for the township for the previous year, which shall be sufficient authority for collecting the same from time to time, to demand and receive from the inhabitants, all such rates and assessments as may be due and payable on such assessment list, and shall pay the same over to the district treasurer on or before the sittings of the quarter sessions, reserving the following fees per cent. § 23.

	£	s.	d.
If the assessment does not amount to £50, then upon the sum collected	8	0	0
If above £50 and under £100	7	10	0
If above 100 and under 150	7	5	0
If above 150 and under 200	7	0	0
If above 200 and under 150	6	10	0
All sums over 250	5	0	0

Collecting Rates.—If any person named on the assessment roll shall neglect or refuse to pay the rate for the space of fourteen days after demand by the collector or his agent duly appointed, the said collector upon oath before one of the commissioners, of such demand and refusal, shall be entitled to demand an execution for the amount, which execution the commissioners are authorised to grant, and upon receipt thereof, the collector shall levy the same by distress and sale of the goods and chattels of the defaulter, giving eight days previous notice of such sale in three public places in the township, and render the overplus to the owner, after deducting the rates assessed and legal charges of distress and sale. § 24.

Fee to such collectors for every distress, advertising and sale, 3*s.* 9*d.* § 25.

Collector's Bond.—Every collector shall, within eight days after his appointment, and before he shall collect any money, enter into a bond, jointly and severally with two sufficient freeholders, to be approved of by the township clerk, to the treasurer of the district to the full amount of double the assessment of the township for the preceding year, which bond may be in the following form. § 26.

Know all men by these presents, that we, A. B. collector of the rates for the township (or townships) of —— in the district of —— and C. D. of —— and E. F. of —— are held and firmly bound to J. O. treasurer of the district of —— in the sum of —— currency, to be well and truly paid to the said J. O. treasurer as aforesaid, or his successors in office, for which payment well and truly to be made to the said J. O. we bind ourselves jointly and severally, our heirs, executors and administrators firmly by these presents. Sealed with our seals.

The condition of the above bond is such, that if the above

bounden A. B. shall collect all the rates and assessments of the township (or townships) of —— for the preceding year, ending the first Monday in January in this present year, so far as the law may enable him to do, and shall pay all the monies which he may so collect (except his own per centage) to the treasurer of the district, on or before the next ensuing sittings of the court of quarter sessions, which may be next after the first day of March, then this obligation to be void, or otherwise to remain in full force and virtue.

If from want of assets or absence of the party from the township, the collector shall not be able to collect the rate, the same may be collected by the collector in any subsequent year as if the rate was due for the year for which he shall be appointed. § 27.

Township Clerk's Bond.—Every township clerk shall, on or before the first meeting of the commissioners, after his appointment, enter into a bond jointly and severally with two sufficient freeholders, such freeholders and the amount of the bond, to be approved by the commissioners, which bond shall be in the form prescribed for collectors, except the condition, which shall be as follows. § 28.

The condition of the above bond is such, that if the above bounden A. B. shall well and truly pay over all monies coming into his hands by virtue of his office, and applicable to the general uses of the township, and deliver the remainder (if any there be,) together with all books, records and papers belonging to the township, into the hands of his successors in office as the law directs, then this obligation to be void, or otherwise to remain in full force and virtue.

Overseer's duties.—It shall be the duties of the overseer of the highways of any township to superintend, make and keep in repair, the highways, roads, streets and bridges, that may be allotted to them severally, from time to time, and ordered by the board of commissioners, and every such overseer after having received such order by giving at least three days notice of the day, hour and place, summon such persons within his division as are liable to perform statute labour that may be due, and order them to work within the time stated in such order, on such parts of the roads, bridges or highways as they are directed to make, amend or repair, and shall or may direct all persons performing such labour, to destroy as much as may be in their power, such weeds as are in his opinion hurtful to good husbandry, and shall give to every person who may have done his statute labour for the year, requiring the same, a certificate under his hand of the performance of such statute labour, to protect such person from being called out again in any other township. § 29.

Composition of Statute Labour.—Any person liable to statute labour according to law may compound on or before the first of May, by paying to the overseer of the division 5*s.* for a team and driver for every day he may be required to work, and 2*s.* 6*d.* every day without such team, which sums shall be expended in such manner as the overseer shall think best for the improvement of the roads in his division. § 31.

Materials.—In order to provide materials for making and erecting bridges or causeways, or repairing any road, any overseer in the actual discharge of his duty, may direct the persons performing statute labour to cut down or make use of any tree or underwood, standing upon any unenclosed and unimproved and uncultivated land, and wilfully doing no unnecessary injury to the premises. § 32.

Statute Labour.—The roads and highways through every township, as also a just share of any road required and necessarily running between the same and any other township, shall be cleared, repaired and maintained by the inhabitants thereof, and every person liable to statute labour, if not compounded for, shall either in person or by a sufficient and able bodied man in his or her stead, be obliged, under the direction of the overseer for the division, to work faithfully and diligently on the said road, and shall bring with him one spade, axe, pickaxe, bar, or such other implement or instrument useful for the purpose aforesaid, as he may be owner of, and be directed by the overseer to bring for the time he may be liable to work, allowing eight hours to each day's work, exclusive of the time of going to and from the place of work: and every person keeping a cart, waggon or team of one or more horses, oxen or beasts of burthen, shall send on every day to be appointed by the overseer, a cart or waggon and team, and one able bodied man to drive the same, for such time as he shall be liable to work on said roads according to law, allowing eight hours for each day's work, which said day's work shall be held equivalent to two day's personal labour; and if any labourer or driver shall refuse or neglect to work faithfully, or to carry good sufficient loads during the time above mentioned, it shall and may be lawful for the said overseer to discharge such labourer, and the person furnishing the team, shall be liable to the forfeiture which every such person would have incurred by virtue of this act in case such labourer had not attended, or such team and driver had not been sent, and shall not be allowed for the part or portion of the day which he may have laboured. § 33.

The overseer shall cause all statute labour and monies in lieu thereof, to be expended between the 1st of May and the 15th of

July in each year, except otherwise directed by the township commissioners for the said township. § 34.

Penalty upon Defaulters.—Every person liable to statute labour, not having compounded, having been duly notified, and neglecting to attend, or send a sufficient deputy with such carriage, team, implement or instrument as may be by this act required and directed by the overseer at the time and place appointed, shall forfeit 5*s.* for each day: and every person after notice to view fences and appraise and deliver his determination within the time specified by this act, shall forfeit not less than 5*s.*, nor more than 20*s.*, to be recovered by the board of commissioners, by confession or upon the oath of one credible witness, and to be levied by warrant, under the hand and seal of the commissioners, by distress and sale of the goods and chattels of the person so offending, rendering the overplus to the party after deducting the penalty and legal charges attending such distress and sale; and the imposing of any such fine or penalty by the commissioners, shall not release the party from his liability, but he shall be subject to perform statute duty at any time within the current year when called upon. § 35.

Obstructions.—And if any person shall wilfully stop up any road or roads in any township, or shall pull down or destroy any fence, railing or guard, that shall have been erected along any water, bridge or precipice, for the safety of travellers, or any guide or finger-post, such offender shall forfeit for every offence, a sum not less than 5*s.* nor more than £5, to be recovered as in the preceding clause; or in case any tree or trees shall be cut down in, or fall out of any enclosed land, in such a way as to obstruct any public road or highway, the owner or occupier of such enclosure, shall remove the same within twenty-four hours after notice received of such obstruction, under the penalty of 10*s.* for every day the obstruction continues, to be recovered in like manner. § 36.

Overseer's List.—The overseers shall make out a true list or account of all persons within their divisions, and also of all who own either a sleigh, cart or waggon, and team, and who are liable to work on the highways; and of the labour done or unperformed by any person liable to perform or compound; and of all monies that have come into their hands by virtue of their office; and of the expenditure of the same; which list or account shall be subscribed by such overseer, and delivered upon oath (if required) to the board of commissioners, at their meeting on the 2nd Saturday in November. § 37.

Pound-keeper's duty.—It shall be the duty of the pound-keeper to provide himself with sufficient yards or enclosures for the safe keeping of all such animals as it may be his duty to impound,

and to impound all animals unlawfully running at large, trespassing and doing damage, that may be delivered to him by any person resident within his division taking up the same, and to furnish the same with necessary food and drink; and if after the space of 48 hours such animals shall not be claimed and redeemed by the owner, or some one in his behalf, paying the pound-keeper his lawful demand and charges, and damages awarded, in the manner hereinafter mentioned, to have been done by such animals to the person taking up the same, he shall cause a notice in writing to be affixed in three public places in the Township, for at least fifteen days, which notice shall give a description of such animals; and also state the time and place at which he intends to expose the same to sale; and if the owner does not, within the time, redeem the same, by paying to the pound-keeper his legal charges, and the damages awarded, he shall proceed to sell the same to the highest bidder, at the time and place mentioned in the notice, and after deducting his own legal charges and the damages awarded, return the overplus to the owner; and if none shall appear to make the claim within three months after notice and sale as aforesaid, the pound-keeper shall pay such overplus into the hands of the township clerk, for the improvement of the roads and bridges. § 38.

Oxen and Horses.—If any ox or oxen, horse or horses, shall be impounded, and not claimed before the expiration of fifteen days as aforesaid, and the owner shall not be known by the pound-keeper, in that case he shall not proceed to sale, but postpone the same for three months, at the expiration of which time he shall sell the same, and dispose of the proceeds as in the last clause, the owner being at liberty at any time before such sale to redeem such animals, on paying demands as aforesaid. § 39.

Notice.—The person impounding any animal, shall, within twenty-four hours, state in writing to the pound-keeper, all demands against the owner for damages, and if the owner shall tender the full sum awarded as damages, with costs then incurred, such owner shall not be liable to subsequent costs, which shall be borne by the party claiming extravagant damages. § 40.

Damages.—The pound-keeper shall, within twenty-four hours after having impounded any animal, notify three disinterested freeholders to appraise the damages done, and to judge of the sufficiency of the fence enclosing the ground wherein such animals were found doing damage, and such freeholders, or any two of them, shall within twenty-four hours after such notice view such fence, and determine whether the same is a lawful fence according to the resolutions of the township meeting, and if so, appraise the damage done, and shall deliver their award in writing to the pound-

keeper, within twenty-four hours after having been so notified; and if no damages shall be awarded the pound-keeper shall, on demand, deliver the same to the owner, and shall be entitled to recover his costs and charges from the impounder. § 41.

Rams, &c.—It shall not be necessary for the pound-keeper to cause fences to be viewed and damages appraised in cases where animals are impounded by him that may be lawfully impounded without being found doing damage, such as rams and other animals not free commoners, but shall otherwise proceed as the law directs. § 42. It shall be lawful for any person to take up any ram, bull or boar, running at large, contrary to the regulations, and deliver the same to the pound-keeper, to be dealt with according to law. § 43. It shall be the duty of the pound-keeper to impound any ram, bull or boar, as aforesaid, that may be delivered to him, and advertise the same at three public places in the township for the space of eight days, or such further time as shall be lawfully prescribed by any regulation at the township meeting, and at the expiration of said term publicly to sell the same to the highest bidder, at the time and place stated in such advertisement, unless such animals shall be previously claimed and redeemed by the owner, by his paying to such pound-keeper his fees and the fine imposed at any township meeting, and the pound-keeper shall pay over the same (except his fees) to the township clerk.—Sec. 44.

Fees.—The pound-keeper's fees shall be regulated by the board of commissioners, and he shall pay over without delay, to the person entitled, such sums awarded as damages, that may come into his hands by virtue of his office. Sec. 45.

Commissioners.—The commissioners to be appointed under this act, shall be known by the name of the board of commissioners for the township of —— and as such shall be capable of performing, ordering and doing all such matters and things as shall be authorised by this act, and the majority shall be competent to transact any lawful business.

Clerk to Commissioners.—The township clerks shall also be clerks to the board of commissioners, and shall attend all their meetings, and record in a book, all judgments, decisions, or orders made by such board, and all other matters which it may be necessary to record, which records shall be part of the records of the township, and shall be delivered to their successors in office.—Sec. 47.

Meeting of the Board.—It shall be the duty of the board to meet at the same place at which the township meeting was last before holden, at the hour of ten in the forenoon, on the third Saturday in January, the 1st Saturday in July, and on the 3rd

Saturday in October, and at as many other times and places in the township as they may deem expedient. Sec. 48.

Their Duties.—The board of commissioners authorised and required to take charge of, allot and order to be made, repaired and kept in repair in such manner as they may think expedient, all such roads and bridges as shall be required to be kept by the inhabitants by any act or acts of the legislature. Sec. 49.

Division of the Township.—The said board of commissioners, at their meeting on the 3d Saturday in January, or at some adjourned meeting, before the 3d Saturday in April shall divide the township into divisions, and allot to the overseers their several divisions, and order statute labour to be expended on the roads in any particular part of such township or any adjacent township, as to them shall seem expedient: and also to hear and determine upon all such matters as may come before them, by virtue of this act. Sec. 50.

Pound Fees.—The board shall also resolve what fees or compensation for poundage or feeding animals, may be taken by the pound-keepers, and the quantity of provender to be daily allowed to the animals; and allot to the pound-keepers their several precincts or divisions, a statement of which, shall be transmitted to the several pound-keepers, and a true copy posted up in some place in the township, within the respective divisions. Sec. 51.

Vacancies.—It shall be lawful for such board, at any of their meetings as aforesaid, to fill up all vacancies in the township offices by appointing other officers instead, that may occur from death or removal, or the neglect, or refusal of any person to take the oath, or affirmation of office, and the township clerk shall notify and administer an oath, or affirmation of office, to such as may be appointed at meetings of the board, and report delinquents in the same manner as if they had been appointed at the township meeting, and such officers, so appointed by such board, shall have the same power and authorities, and be liable to the same responsibilities and penalties as under an appointment at the township meetings. Sec. 52.

Exemptions.—Any person not assessed at more than £35, and by reason of age, sickness, numerous family, or misfortune, in poor and indigent circumstances, may, upon notifying the overseer, and application to the board of commissioners to be released from statute labour, in the discretion of the board, be exempted from the whole or part of such statute labour. Sec. 53.

Neglecting Oath of Office.—Any person appointed to a township office, neglecting or refusing to take the oath, or affirmation of office within eight days after due notification, or after such oath or affirmation, neglecting or refusing to act, or taking any

greater fee or allowance than is authorised by this act, or neglecting, or refusing to deliver in a true list of his or her rateable property, real or personal, or wilfully mistating such rateable property, shall forfeit and pay, not less than one pound, nor more than five pounds, with costs, for every such neglect, refusal, or violation of the law, to be levied by distress and sale of the offender's goods: eight days' previous notice of such sale being given, and the overplus rendered to the owner. Sec. 54. Upon complaint of such neglect, or refusal, or violation, before the board of commissioners, or if such neglect, or refusal shall come to the knowledge of the said commissioners by returns as aforesaid, the said board shall, after summoning the party, or delinquent before them, (which summons, any member of the board may issue) hear and determine the same, upon sufficient proof, by confession, or oath of one witness, and issue such warrant of distress and sale as aforesaid, to some constable of the township who is authorised to execute the same, unless the penalty be immediately paid, and the same, when collected, shall be paid to the township clerk. Sec. 55.

Commissioner's Fees.—The several commissioners for the respective townships, shall be entitled to demand and receive from the treasurer of the district, the sum of 5*s.* per day, for every day they are necessarily engaged in the said duties and services, the said days to be certified by the township clerk, which sum the treasurer is authorised and required to pay, on demand and production of such certificate, and the commissioners shall render an account to the township clerks, of the monies so received by them, which account, together with all monies received by the said clerk for his services, shall be laid before the next township meeting for inspection. Sec. 56.

Constable's Fees.—The constable, executing any warrant, execution, or summons under this act, shall be entitled to the following fees, and no more, for executing the same, viz: 4*d.* per mile for every mile he may have to travel to execute the same, to be verified upon oath; if required, and for levying, advertising, selling and making returns, 2*s.* 6*d.*; for every summons sued, 8*d.*—Sec. 57.

Overseer's Returns.—It shall be the duty of the board carefully to examine the returns of the several overseers, and of the township clerk, and also the books, accounts, and papers of such clerk, and upon the appearance of any neglect or default, the board shall summon such person to answer for such offence, and proceed against him, as if complaint had been duly made. Sec. 58.

Summons.—It shall be lawful for the board, or any one of them, to issue a summons to any person in the township, that may be required by any party, or if such board shall think it necessary to

require the attendance of any witness to appear before the board at any of their meetings, to give evidence, or answer to a complaint, as the case may be, which summons may be in the following form. Sec. 59.

To A. B.

You are hereby required to be and appear before the board of commissioners for the township of —— on the —— day of —— at —— in the said township, to give evidence respecting a complaint against C. D. and for (describing the complaint) or to answer to a complaint against you, (describing the complaint) as the case may be. Dated, this —— day of —— 183—.

E. F.
Commissioner.

Monies.—Justices of the peace are authorised to pay into the hands of the township clerk, all monies arising from fines, &c. under the summary punishment act (4 *W.* 4. *c.* 4.) also the commutation in lieu of militia service, under the 4 *W.* 4. *c.* —. Sec. 60.

Annual Account.—The township clerk shall make out a full and detailed account of all monies received and expended by virtue of this act, during the current year, certified and signed by him, and a copy thereof shall be put up for public inspection, at three of the most public places within the township, one of which shall be the place at which the ensuing township meeting shall be ordered to be held, on or before the third Monday in December, and the said clerk shall be allowed 10*s.* for each copy. Sec. 61.

Expenditure of Monies.—All monies that shall come into the hands of the township clerk by virtue of his office, shall be expended by the board of commissioners in making or improving the public highways, roads and bridges of such township, and shall be paid by such township clerk to the order of such board, and the monies remaining unexpended in his hands, shall be handed over to his successor, within four days after the termination of his office. Sec. 62.

Wild Lands.—The township clerk authorised to demand and receive from the district treasurer, at any time after the quarter sessions, next after the first of March, all monies paid into the treasury for his township, under the wild lands assessment act, for the improvement of roads and bridges, and that have not been expended, and the respective township clerks first appointed under this act, are authorised to demand and receive from the treasurer, all such money as aforesaid, as may be remaining in the treasury unappropriated, any law, &c. to the contrary notwithstanding.—Sec. 63. The wild land assessment monies shall be laid out by the commissioners in making or improving roads and bridges in the township in which the lands are situated for which such taxes

are paid, and the said commissioners shall make out a return of the amount so received, and the manner and place where the same has been expended, to be handed to the clerk, and laid before the next township meeting.—Sec. 64.

Contracts.—Commissioners may contract with any person or persons resident in the township, for making, in a permanent and substantial manner, any part of any public road within their township, in lieu of his or their statute labour, for any number of years, not exceeding five; which agreement shall be in writing, and signed by the parties, and shall be binding on the commissioners and their successors, and the other parties to the contract.—Sec. 65. In case of any breach of said contract, the parties shall be liable to the same penalty that persons are by this act liable, for refusing or neglecting to perform statute labour. Sec. 66.

Arbitration by Ballot.—In case of any dispute as to the fulfilment of the contract, the same shall be submitted to three overseers of highways of the township for the year, to be drawn by public ballot, from the whole list of overseers, by the township clerk, who shall give the contending parties notice of the time and place of such ballot, and the township clerk shall appoint the time and place for the meeting, and shall give the overseers and the parties to such dispute, at least, eight days notice, and thereupon it shall be the duty of such overseers to meet, and after having the said agreement submitted to them, and examining the premises, to make such award as to them shall appear just, which shall be final. Sec. 67. False swearing, or affirming, under this act, to be liable to prosecution for perjury. Sec. 68. The township clerk shall require the bond from the collector, and if not given, it shall be reported to the board of commissioners, who may appoint another, or impose a penalty for neglect. Sec. 69.

Town Wardens.—Commissioners, under this act to be town wardens. Sec. 70.

Township Records.—Records of the townships may be examined, on payment of 1*s.* Sec. 71. In case of the inadvertent omission of any name in the assessment roll, such person shall, notwithstanding, be liable to work on the highways. Sec. 72.

Commencement of Act.—This act to take effect on the first of December next, and no sooner. Sec. 73. And be in force two years. Sec. 74.

Immediate Repairs.—In case it shall be necessary to repair any sudden breach in the public highway, by reason of any bridge, or causeway giving way, or from any other casualty, or to remove any obstruction on account of snow, or to fix, or set up beacons, or stakes as a guide for travellers, the overseers of the division may do so out of the monies in their hands applicable to the roads,

or direct statute labour for that purpose, and in case the overseer shall not have in his hands at the time, any such monies, or statute labour at his command, he may direct any person in his division, liable to statute labour, to repair such breach, &c. and such overseer shall keep an account of the time, which he shall transmit to the clerk, to be laid before the commissioners, who may exempt such persons from performing any part of his statute labour the next year, and give a certificate to that effect, which shall be taken and credited by the overseer; and any person neglecting or refusing to work as aforesaid, shall be liable to the same penalties as before prescribed for neglecting, or refusing to work, unless reasonable excuse can be shewn. Such labuor to be equally proportioned in the division. Sec. 75.

Commissioners Incorporated.—The commissioners under this act to be as a corporation, to represent the whole inhabitants, and may sue, prosecute, or defend. Sec. 76.

INSANE PERSONS.

By 11 *G.* 4. *c.* 29. The clerk of the peace for the Home district is required to exhibit annually, a detailed account of the monies expended for the support of insane destitute persons, to the grand jury at the general quarter sessions, and thereupon it shall be lawful for the chairman to issue his warrant for the payment of the same, by the treasurer of the district, and the said court of quarter sessions may, by writ of subpœna, compel the attendance of witnesses to give evidence upon oath, respecting such insane and destitute persons;—the said act to continue in force two years.

The above act is by the 3 *W.* 4. *c.* 46. continued for the further period of two years, and to the end of the next session of parliament.

The provisions of the above acts are confined to the Home district.

SCHOOLS.

By 5 *W.* 4. *c.* 29. The sum of £5,650 is granted for the year 1835, in addition to the sums now appropriated, to be applied in the same manner, to be apportioned as follows:—to the Eastern district, £500; Johnstown district, £500; Bathurst district, £500; Midland district, £550; Prince Edward district, £200; Newcastle district, £500; Home district, £750; Gore district, £600; Niagara district, £500; London district, £600; Western district, £350. Sec. 3. It shall not be lawful, during the year aforesaid, for the board of education to pay any teacher of a common school the annual allowance, unless the trustees shall make it appear to the satisfaction of the board, that they have provided for his support in a sum, at least, equal to double the amount allotted by the board of education. Sec. 4. Board of education in each district may allow their clerks an additional salary of £5.

CORONERS.

Names of the Coroners of the several Districts in this Province, inserted in the last Commissions, dated the 16th day of March, 1835.

EASTERN.
Albert French,
Alexander Wiley,
James Sterling,
John P. Crysler,
William Bruce,
Angus McPherson,
John Grant.

OTTAWA.
William McFarlane,
Anthony Swallowell,
Alfred Chesser,
Charles Treadwell,
John Buchanan,
William Smith,
John Brady,
Donald McDonald,
William York.

JOHNSTOWN.
Joseph K. Hartwell,
William J. Scott,
Colin McDonell,
William Merrick,
James Maitland,
Robert Edmondson,
Alexander Grant,
James L Schofield,
Solomon Henderson,
Milow McCargar,
Benjamin Tett,
John Weatherhead,
William P. Loucks,
William R. DeRinzie.

BATHURST.
Alexander J. Christie,
John McIntyre,
Thomas Sproule,
Thomas Read,
Andrew Buchanan,
James Morris,
John Ritchie,
John Hall,
George H. Reade,
James Drysdale,
William Rogerson.

MIDLAND.
Samuel Shaw,
John D. Gilbert,
David L. Thorpe,
Thomas Corbitt,
Anthony Marshall,
George H. Detler,
John W. Ferguson,

PRINCE EDWARD.
Thomas Moore,
John A. McPherson,
Paul E. Washburn,
John Dougall,
Reuben Young.

NEWCASTLE.
Benjamin Ewing,
Thomas Harris,
Thomas V. Tupper,
John Gilchrist,
David Brodie,
Donald Campbell,
Thomas Corbitt,
Thomas J. Grover,
William Lawson,
Francis Henderson,
Richard D. Chatterton,
Christ'r. Knowlson, Jun.

HOME.
Arad Smalley,
Thomas G. Anderson,
George Duggan,
John Scott,
James Collman,
James Gardiner,
Henry Boyes,
William Roe,
David Bridgeford,
Samuel Richardson,
William Simpson

GORE.
James Muirhead,
David Beasley,
James Kirkpatrick,
James Applebe,
Edward U. Leonard,
A. Proudfoot,
Robert Alling.

NIAGARA.
Cyrenus Hall,
Gilbert McMicking,
Samuel Wood,
William D. Miller,
Edward Lee,
Alpheus S. St. John,
James W. Perkins,
George Nelles,
Zenos Fell,
Joseph Wynn,

LONDON.
Jonathan Austin,
David Bowman,
George Moore,
Elam Stimson,
Charles Duncombe,
S. J. Stratford,
Thomas Phillips,
James Hamilton,
J. C. W. Daly,
Uniacke Ronayne,

WESTERN.
James Little,
William Hall,
William Ambridge,
Thomas W. Rothwell,
James Baby.
P. P. Lacioix,
James Kevill.

CORONER.

The court of the coroner is a court of record, to enquire when any one dies in prison, or comes to a violent, or sudden death, by what manner he came to his end, and this he is only entitled to do *super visum corporis*, (upon view of the body.) 4 *Inst.* 271. 2 *Hale's P. C.* 53. The coroner's duty being partly judicial, it cannot be executed by deputy. *Impey. O. C.* 473.

By *stat.* 4 *Ed.* 1. *st.* 2. called the statute *de officio coronatoris* which enacts, "that the coroner, upon imformation, shall go to the place where any be slain, or suddenly dead, or wounded, and shall forthwith command four of the next towns, or five, or six, to appear before him in such a place; and when they are come, the coroner upon the oath of them, shall enquire if they know where the person was first slain, whether it were in any house, field, &c. and who were there.—Likewise it is to be enquired, who were culpable either of the act or of the force, and who present, and of what age they be, (if they can speak, and have discretion) and as many as shall be found culpable by the inquest, shall be committed to gaol; and such as shall be found there, and be not culpable, shall be attached until the coming of the justices, and their names shall be written in the rolls. If any man be slain suddenly, which is found in the fields, or in the woods, first it is to be seen whether he were slain in the same place or not, and if he were brought there, they shall do as much as they can to follow their steps that brought him; it shall be enquired also, if the dead person were known, and where he lay the night before. And if any be found culpable of the murder, the coroners shall go to his house and enquire what goods he hath, and what corn he hath in his grange; and if he be a freeman, they shall enquire how much land he hath, and what it is worth yearly, and what crop he hath upon the ground. And they shall cause all the land, corn, and goods to be valued, and delivered to the townships, which shall be answerable before the justices; and likewise of his freehold, how much it is worth yearly, and the land shall remain in the King's hands until the lords of the fee have made fine for it. And these things being enquired, the bodies shall be buried." § 1.

"In like manner it is to be enquired of them that be drowned, or suddenly slain, whether they were drowned, slain, or strangled, by the sign of the cord about their necks, or any other hurt found upon their bodies; and if he were not slain, then ought the coroner to attach the finder and all other in the company. A coroner also ought to enquire of treasure found, who were the finders, and who is suspected thereof; and that may be perceived where one liveth riotously, haunting taverns, and hath done so of long time, hereupon he may be attached for this suspicion by four, or six, or more pledges. Also all wounds ought to be viewed, the length, breadth and deepness, and with what weapons, and in what part of the body the wound is; and how many be culpable, and how many wounds there be, and who gave the wound: all which things must be enrolled in the roll of the coroners. Concerning

horses, boats, carts, &c. whereby any are slain, they shall be delivered unto the towns, as before is said. If any be suspected of the death of a man, being in danger of life, he shall be taken and imprisoned. In like manner hue-and-cry shall be levied on all murderers, burglaries, and for men slain, or in peril of death; as is used in *England*, and all shall follow the hue and steps as near as can be; and he that doth not, and is convict, shall be attached to be afore justices of the gaol." § 2.

Of Sudden, Violent Deaths, which are all within the Coroner's Office to enquire, and Inquisitions.

Sudden, violent deaths, are of these kinds:—1. *By the visitation of God:*—2. *By misfortune*, where no other had a hand in it; as if a man fall from a horse or cart:—3. By his own hand, as *felo de se:*—4. By the hand of another, where he is known, whether by murder, man-slaughter, *se defendendo*, or *per infortunium*. 2 *Hal. P. C.* 62.

Coroners are not to obtrude themselves into private families, where there is no pretence for supposing that the deceased died otherwise than by a natural death. 11 *East.* 231.

1. The dying suddenly is *not* to be understood of a fever, apoplexy, or other visitation of God, for then the coroner might be sent for in every case. *Umfr.* 208. If the inquisition find that he died *by the visitation of God*, there is no more to be done, only the inquisition together with the examination, are to be returned to the next gaol delivery.

2. If the inquest find the death *per infortunium* simply, as a *fall*, &c. then the coroner is to take examination, and return the same, with the inquisition *to the next gaol delivery*, and to enquire of the *deodand* and the value, and in whose hands, and to seize and deliver the same to the township, to be answerable for the same to the King. 4 *Ed.* 1.

3. If the inquest find a man *felo de se*, who is one that puts an end to his own existence, or commits any unlawful malicious act, the consequence of which, is his own death: as, if attempting to kill another, he runs upon his antagonist's sword; or shooting at another, the gun bursts and kills himself; they ought to find the *special matter*, and also what goods and chattels he had, of what value, and seize and deliver the same to the township, to be answerable to the King, or his almoner, or the lord of the franchise, to whom they belong, and shall bind over the first finder of the body to the next gaol delivery. 2 *H. P. C.* 62.

4. If the party be slain, and the felon is *not known*, they are to find their inquisition accordingly, and shall bind over the first finder of the body to the next gaol delivery, and return his examinations, together with his inquisitions. 2 *H. P. C.* 63.

5. But if the person was slain, and the party that did it was known, and the inquisition found him guilty of the death, or that he died by his hand, there were these proceedings, viz:—The inquest were also to enquire of all that were *present*, *aiding*, and *abetting;* they shall also enquire of all accessories *before the fact;* but they cannot enquire

of accessories *after the fact.* If they find him guilty, as principal, or accessory before the fact, they shall enquire whether *he fled* for the same; if the inquisition find that he fled, it is a forfeiture of his goods; but they cannot be seized before he be convicted of the felony. 1 *R.* 3. *c.* 3. 2 *H. P. C.* 63.

If the persons that are found guilty by the inquest be taken, the coroner may and must commit them to the sheriff, and he is to send them to the gaol; but if they be not found, he is not to proceed to *out-lawry*, but return his inquisition to the next gaol delivery, and the justices of gaol delivery are to proceed against the offenders, if in gaol; if not, then to certify the inquisition into the King's Bench, and then process of out-lawry to go against them upon that inquisition. 4 *Ed.* 1. 3 *H.* 7. *c.* 1. 2 *H. P. C.* 64.

It is clearly agreed that the inquest shall be taken on the *view* of the body; and that an inquest otherwise taken by the coroner is void. 2. *Haw. P. C. c.* 9. § 23. But when the body cannot be found, or is so putrefied that a view would be of no service, the coroner, without a special commission, cannot take the inquest; but in such cases it shall be taken by justices of the peace, or other justices authorised, by testimony of witnesses. *Vent.* 352. *Haw. P. C. c.* 9. § 25. It is an indictable offence to bury the body before, or without sending for the coroner. 1. *Salk.* 377. And a coroner may, within a convenient time, take up a dead body out of the grave, in order to view it and hold an inquest. The coroner may inquire of accessories *before* the fact, but not accessories *after* the fact. *Moor*, 20. *Pl.* 95.

Where there is no pretence for supposing that the deceased died otherwise than by a natural death; for instance, if he died of fever, apoplexy, or other visitation of God, an inquisition ought not to be held, *Umfr.* 208. The coroner ought also to inquire of the death of all persons who die in prison, that it be known whether they die by violence or any unreasonable hardships, for if a prisoner, by the duress of the gaoler, come to an untimely death, it is murder in the gaoler. 3 *Inst.* 52. 91. And this inquest upon prisoners ought to consist of a party jury, that is, six of the prisoners, (if so many there be) and six of the next vill or parish, not prisoners. *Umfrev.* 212. 213.

The coroner cannot set any fine for the non-appearance of constables, jurymen, &c. but should present the same to the next gaol delivery, and the court then will impose the fine. 2 *Hal. P. C.* 62.

Of Crimes.

The crimes which are likely to come under the cognizance of a coroner, and the law thereon, are fully set forth in the preceding part of this work, under the title of "Homicide," p. 220. with the exception of the crime of *Felonia de se*, or suicide; which is committed when a person of the age of discretion and *compos mentis*, kills himself by stabbing, poison or any other way. 1 *Hal. P. C.* 411. If he lose his memory by sickness, infirmity or accident, and kills himself, he is not *felo de se*, neither can he be said to commit murder upon himself or any other. It is not every melancholy or hypocondriacal distem-

per that denominates a man *non compos mentis*, for there are few who commit this offence but are under such infirmities, but it must be such an alienation of mind that renders them to be madmen, or frantic, or destitute of the use of reason. A lunatic killing himself in the fit of lunacy is not *felo de se;* but if he kills himself in a lucid interval he is a *felo de se.* 1 *Hal. P. C.* 412. If a man voluntarily give himself a mortal wound, and die within a year and a day of that wound, he is *felo de se*, and he cannot purge the crime nor the forfeiture inflicted by the law, by his repenting what he had done. *Ib.* 411. It must be simply *voluntary* and with an *intent* to kill himself. If A. to prevent a *gangrene* beginning in his hand, doth, without advice, cut off his hand, by which he dies, he is not thereby *felo de se;* for though it was a voluntary act, yet it was not with an intent to kill himself. *Ib.* 412. A *felo de se* shall be buried in the highway, with a stake driven through his body. 4 *Bl. Com.* 190. This barbarous custom has been repealed in England, by statute 4 *G.* 4. which does not however extend to this province. The forfeiture of *felo de se* is of goods and chattels only. 1 *Hale, P. C.* 413.

Of Deodands.

A deodand is where any man kills himself, or is by misfortune slain by a horse, cart, or any other thing that *moveth* to his death; then the thing which is the cause of or moved to his death shall be forfeited to the King. *Lill. Pr. Reg.* 607. No deodand is due when an infant under the age of discretion is killed by a fall from a cart, or horse, or the like, not being in motion. 1 *Hale*, 422. But if a horse, or ox, or other animal, of his own motion kill, as well an infant as an adult, or if a cart run over him, they shall in either case be forfeited as deodands. Where a thing *not in motion* is the occasion of death, that part only which is the immediate cause is forfeited; as, if a man be climbing up the wheel of a cart, and is killed by falling from it, the wheel alone is a deodand; but wherever the thing is in motion, not only that part which immediately gives the wound, (as the wheel which runs over the body) but all things which move with it, and help to make the wound more dangerous, as the cart and loading are *deodand.* 1 *Haw. P. C. c.* 26.

Where the act of one Coroner shall be as effectual as if done by all.

Wherever coroners are authorised to act as judges, as in the taking of an inquisition of death, the act of any one of them who first proceeds in the matter, is of the same force as if all had joined in it. 2. *Hal. P. C.* 56. But it is said, that *after* such proceeding by any one of them, the act of any other will be void. *Ib.* 59. Also, it is certain that when coroners are empowered to act only ministerially, as in the execution of a process directed to them upon the default or incapacity of the sheriff, all their acts will be void, wherein they do not all join. *Staunf. P. C.* 53. *a.* One coroner may execute the writ, as in the case of an *exigent;* but if there be more coroners than one

for the county, the return must be in the name of all. 2 *Hal. P. C.* 56. The taking of an inquisition cannot be done by deputy. 2 *Hal. P. C.* 58. 60. In the case of process to coroners upon any disability in the sheriff, the sheriff is no longer considered as an officer of the court in that suit; and the coroners may do *all* such lawful acts, as the sheriff himself, might have done, and they may take the *posse comitatus*. *Hob.* 85. If the sheriff be sued, the writ is to be directed to the coroners. *Impey.* 490. If there be above two coroners in a county, and a writ be directed to the coroners, though one die, the others may execute; but if one only survive, he can neither execute nor return the writ, till another be made. 2 *Hal. P. C.* 56. Where the sheriff and coroners of particular places and liberties, have been all challenged, in all cases *elisors* have not been appointed, but *venires* have been directed to the sheriff of the county at large, to summon a jury from the next adjacent *visne*; and two elisors at least, ought to be appointed. *Bendl.* 23.—*Dy.* 367. The same challenges that may be made to the sheriff, may also be made to the coroners; in which case, if all the coroners be challenged, the *venire* may then be awarded to *elisors*, who are always chosen and appointed by the court, by rule, to return the jury.

Of Fees that he may lawfully take.

By *stat. West.* 1. It is enacted, "that no coroner demand any thing of any man to do his office, upon pain of great forfeiture to the King; which was made in affirmance of the common law." 2. *Inst.* 176.

But by 3 *H.* 7. It is enacted, "that a coroner have for his fee, upon every inquisition taken upon the view of a body slain, 13*s.* 4*d.* of the goods and chattels of the slayer or murderer, if he have any goods; and if he have no goods, of such amercements as shall fortune any township to be amerced for the escape of the murderer, &c."

But coroners endeavouring to extend this statute to persons slain by *misadventure*, it was enacted by 1 *H.* 8. *c.* 7. "that upon a request made to a coroner to come and enquire, upon the view of any person slain, drowned, or otherwise dead by misfortune, the said coroner shall diligently do his office, without taking any thing therefor, upon pain to every coroner that will not endeavor himself to do his office, (as aforesaid,) or that taketh any thing for doing his office upon every person dead by misadventure, for every time, 40*s.*"

To the intent, however, that coroners may be encouraged to execute their office with diligence and integrity, it is enacted by *stat.* 25. *G.* 2. "that for every inquisition not taken upon the view of a body dying in a gaol or prison, which shall be duly taken in *England* by any coroner, in any township or place, contributing to the *rates* directed to be levied by 12 *G.* 2. *c.* 29. he shall have 20*s.* and for every mile which he or they shall be compelled to travel from the usual place of his or their abode, to take such inquisition, the further sum of 9*d.* over and above the said sum of 20*s.* shall be paid to him or them, out of the monies arising from the rates before mentioned, by order of the justices of the peace, in their general or quarter sessions assembled,

for the county, &c., where such inquisition shall have been taken, or the major part of them, and which order the said justices, or the major part of them, are authorised and directed to make, for which no fee or reward shall be paid to the clerk of the peace, or any other officer.

Under this act, a coroner can only charge for every mile from the place of his abode to take the inquest, and not for those he travels in returning. *R. v. Oxfords. Inst.* 2. *B. & Ald.* 203. And he is not entitled to separate allowances under the 25 *G.* 2. *c.* 26. when he holds several inquests on the same day. *R. v. Warwick. Inst.* 5. *B. & Cr.* 430.

"And for every inquisition which shall be duly taken, upon the view of a body dying in any gaol or prison in *England*, by any coroner of a county, so much money, not exceeding the sum of 20*s.* shall be paid to him or them, as the justices of the peace, in their general or quarter sessions assembled, for the county, &c. or the major part of them, shall think fit to allow, to be paid in like manner by order of the justices, or the major part of them, out of the monies as aforesaid. 25 *G.* 2."

"Provided, that over and above the recompense hereby limited and appointed for inquisitions taken as aforesaid, the coroner, who shall take an inquisition upon the view of the body slain, or murdered, shall also have the fee of 13*s.* 4*d.* payable by 3 *H.* 7. out of the goods and chattels of the slayer, or out of the amercement imposed upon the township, if the slayer and murderer escape."

"Provided also, that no coroner, to whom any benefit is given by this act, shall, by color of his office, or upon any pretext whatsoever, take for his office doing, in case of the death of any person, any fee or reward, other than the said fee of 13*s.* 4*d.* limited as aforesaid, by the said act, 3 *H.* 7. and other than the recompense hereby limited and appointed, upon pain of being guilty of extortion. 25 *G.* 2."

Of discharging the Coroner, and for what misdemeanors punished.

The coroner in this province holds his office during his Majesty's pleasure, and is therefore removable at any time upon just cause shewn.

By *stat.* 3. *H.* 7. "If any coroner be remiss, and make not inquisition upon the view of the body slain or murdered, he shall forfeit, for every default, 100*s.*"

And by 1 *H.* 8. It is enacted "that if any coroner shall not endeavor himself to do his office upon any person dead by misadventure, he shall forfeit 40*s.*"

Also, by 3 *H.* 7. It is enacted "that if any coroner do *not* certify his inquisition, he shall forfeit 100*s.*"

He is to return his inquisition at the next gaol delivery; and because he did not, the court discharged him, and set a fine of £100. *R. v. Ld. Buckhurst. Keb.* 208. *Pl.* 81.

By *stat.* 25. *G.* 2. "If any coroner, who is not appointed by virtue of an annual election, or nomination, or whose office of coroner is not annexed to any other office, shall be lawfully convicted of *extortion*, or

wilful neglect of his duty, or misdemeanor in his office, it shall be lawful for the court, before whom he shall be committed, to adjudge, that he shall be amoved from his office."

This statute is only in furtherance of the powers which before existed for their removal.

By *stat.* 1 *H.* 8. Justices of assize, and justices of peace within the county have power to inquire of, and punish the defaults of coroners.

Proceedings by the Coroner.

When the coroner receives notice of a violent death, casualty, or misadventure, which regularly ought to be given from the peace officer of the parish, place or township, where the body lies dead, he is then to issue his precept, or warrant, to summon a jury to appear at a particular time and place named, to enquire when, how, and by what means the deceased came by his death; which warrant is directed to the peace officers of the parish, place, or precinct, where the party lies dead.

Form of the Warrant.

Home District, } To the constables and peace officers of the township
to wit. } of ——— in the Home district.

By virtue of my office, these are in his Majesty's name, to charge and command you, that on sight hereof, you summon and warn twenty-four able and sufficient men of your township, personally to be and appear before me, on ——— the ——— day of ——— at ——— o'clock in the forenoon of the same day, at the house of A. B. called or known by the name or sign of the ——— situate in the said township, then and there to do and execute all such things that shall be given them in charge, on behalf of our sovereign lord the King, touching the death of R. F. and for so doing, this shall be your sufficient warrant; and that you also attend at the time and place above mentioned, to make a return of the names of the persons, whom you shall have so summoned, and further, to do and execute such other matters as shall be then and there enjoined you. And have you then there this warrant. Given under my hand and seal, this ——— day of ——— 183—.

G. H. *L. S.*
Coroner,

If there be not sufficient jurors in the place, the coroner may summon them from the adjoining township or parish. *Impey*, 512.

The coroner should furnish a sufficient number of blank summonses to the constable, for service by him upon the jurors, pursuant to the above warrant.

Form of the Summons.

Home District, } To R. M. of the township of ——— in the Home
to wit. } district, yeoman.

By virtue of a warrant, under the hand and seal of G. H. gentleman, one of his Majesty's coroners for the said district, you are

hereby summoned to be and appear before him as a juryman, on the ——— day of ——— at ——— of the clock in the forenoon of the same day, at the house of ——— known by the sign of the ——— in the township of ——— in the said district, then and there to inquire in his Majesty's name, touching the death of R. F. and further, to do and execute such other matters and things as shall be then and there given you in charge, and not to depart without leave. Herein fail not, at your peril. Dated the ——— day of ——— 183—.

E. F. *Constable.*

On the day appointed, the coroner attends, and having received the return of the jurors, and precept, &c. the first thing he does, is to direct the officer to open the court by proclamation, viz. by proclaiming "Oyez" three times, and to repeat after him as follows:

"You, good men of this district, summoned to appear here this day, to inquire for our sovereign lord the King, when, how and by what what means, R. F. came to his death, answer to your names as you shall be called, every man at the first call, upon the pain and peril that shall fall thereon."

The coroner then proceeds to call over the jury by name, marking the names of such as appear in the list. There must be twelve at the least to constitute a jury, but it is usual to swear thirteen or more: the jurors then proceed to choose their foreman; when done, he is called to the book and sworn first, the coroner at the same time saying to the rest of the jurors, "Gentlemen, hearken to your foreman's oath: for the oath he is to take on his part you are severally to observe and keep on your part."

Foreman's Oath.

"You shall diligently inquire and true presentment make of all such matters and things as shall be here given you in charge on behalf of our Sovereign Lord the King, touching the death of R. F. now lying dead, of whose body you shall have the view; you shall present no man for hatred, malice, or ill will, nor spare any through fear, favour or affection; but a true verdict give according to the evidence. So help you God."

The rest of the jurors are then sworn thus, four at a time:—

"The same oath your foreman has taken on his part, you and each of you are severally well and truly to observe and keep on your parts." "So help you God."

After they are sworn it is usual for the coroner to give a charge acquainting them with the purpose of the meeting, as thus:—

"Gentlemen, you are sworn to inquire on behalf of the King, how and by what means R. F. came to his death; your duty is here to take a view of the body of the deceased, wherein you will be careful to observe if there be any marks of violence thereon, from which and on the examination of the witnesses intended to be produced before you, you will endeavovour to discover the cause of his death, so as to be able to return me a true verdict on this occasion."

When the charge is finished the coroner goes with the jury to take a view, and examine the body of the deceased. As soon as the view is taken it is usual for the coroner again to call them over, and add to his former charge some necessary observations he has made on view of the body; and add, "that he shall now proceed to hear and take down the evidence respecting the fact, to which he must crave their particular attention." Particular charges are not necessary but in particular cases arising from the fact or in the course of the evidence, such as lunacy, *felo de se*, deodand, flight, forfeiture, &c. The deodand requires no other charge than of a value to be put upon what caused the death, and of whose property and in whose possession. As to the particular charge in case of a flight, which induces a forfeiture, where the party charged is not forthcoming, it may be necessary to add something to the general charge, as thus:—

"Your charge will be further to inquire in what degree the party charged is guilty, whether of murder or manslaughther, or of a killing in his own defence; if you find him guilty of murder or manslaughter, you are then to inquire what goods and chattels, lands or tenements he had at the time of the act committed or at any time since; if you find the fact to be of a justifiable homicide from inevitable necessity, or in defence of his own person, life, or property, or where a suspected person doth fly and resist the proper officer, and is from necessity slain because he could not be otherwise taken: this flight and resistance presumes a guilt, and will incur a forfeiture, and therefore you are to inquire whether in either of the instances the party fled for it; this is a presumptive confession of the charge, and you are then to inquire of his goods and chattels, but not lands or tenements, in the same manner as if you had found him guilty."

The latter charge may be given after the evidence taken, so as to have a perfect verdict.

If the inquiry be of the death of one man by another, and it be doubtful whether the wound be mortal or not, a surgeon should be present to examine and show the wound.

After the general charge is given by the coroner, the officer then calls silence, and repeats after the coroner thus:—

"If any one can give evidence on behalf of our sovereign lord the King when, how and by what means R. F. came to his death, let them come forth and they shall be heard."

The witness appearing, the coroner takes down his name, place of abode and occupation, and then the officer tenders to him the following oath:—

"The evidence you shall give to this inquest on behalf of our sovereign lord the King touching the death of R. F. shall be the truth, the whole truth, and nothing but the truth. So help you God."

The evidence should be taken down in writing, and as nearly as possible in the words of the witness.

The examinations should be entitled thus:—

Home District, } Informations of witnesses severally taken and ac-
to wit. } knowledged on the behalf of our sovereign lord the King, touching the death of R. F., at the dwelling house of J. B.,

known by the name or sign of the ——— in the township of ——— in the county of —— in the Home District, on the —— day of —— in the — year of the reign of our sovereign lord William the Fourth, &c. before E. H., Esquire, coroner of the said district, on an inquisition then and there taken on view of the body of the said R. F. then and there lying dead, as follows, to wit:—

A. B., of the township of ——— in the said Home District, yeoman, being sworn saith, &c.

Before the witness signs his examination it should be read over to him, and he should be asked "if that is the whole of the evidence he can give." He then signs it to the right hand of the paper. The coroner generally asks the jurors before the witness signs, whether they have any questions for him to ask the witness: and if any be asked, and the answer prove material, it should be added to the deposition. When the witness has signed his name to the examination taken, the coroner writes thus, to the left hand side: "taken and acknowledged the day, year and at the place above mentioned, before G. H., coroner;" or if there are several witnesses, then at the end of the last information, thus, "all the above informations were severally taken and acknowledged on the day and year and at the place first above mentioned, before G. H., coroner."

If the evidence be not all taken, the coroner may adjourn the jury to another day, to the same or another place, to take and receive other evidence, first binding the jurors in a recognizance to appear at the adjournment, thus:—

"Gentlemen, you acknowledge yourselves severally to owe to our sovereign lord the King the sum of ten pounds, to be levied on your goods and chattels for his Majesty's use, *upon condition* that you and each of you do personally appear here again (or other appointed place) on —— the —— day of —— instant, at —— of the clock in the forenoon precisely, then and there to make further inquiry on behalf of our sovereign lord the King touching the death of the said R. F., of whose body you have already had the view. Are you all content?"

The coroner then adjourns the court, thus:—

Gentlemen, the court doth dismiss you for this time: but requires you severally to appear here again (or at the adjourned place) on —— the —— day of ——— instant, at —— of the clock in the forenoon precisely, upon pain of £10 a man, on the condition contained in your recognizance entered into.

The coroner may in his discretion grant his warrant to bury the body of the deceased to prevent infection. Then the officer adjourns the court by making proclamation thus, "Oyez! oyez! oyez! all manner of persons who have any thing more to do at this court before the King's coroner for this district, may depart hence and give their attendance here again *(or other adjourned place)* on —— the —— day of —— instant, at —— of the clock in the forenoon precisely. God save the King."

The coroner will make a proper entry in his minutes of the recognizance and the adjournment, &c.

When the jury are met at the adjourned time and place, the officer opens the court by proclamation as in the first instance, *p.* 9, with this addition:—

"And you, gentlemen of the jury, who have been impannelled and sworn on this inquest to inquire touching the death of R. F. severally answer to your names, and save your recognizance."

If foreigners are examined as witnesses, the coroner is to have an interpreter, who is to be sworn, thus:—

"You shall well and truly interpret unto the several witnesses here produced on the behalf of our sovereign lord the King, touching the death of R. F. the oath that shall be administered to them, and also the questions and demands which shall be made to the witnesses by the court or jury, concerning the matters of this inquiry, and you shall well and truly interpret the answers which the witnesses shall thereunto give." *So help you God.*

He then interprets the oath which is given in *p.* 10.

After the additional evidence has been taken down in writing and subscribed by the witnesses, the coroner then sums up the whole of the evidence to the jury, at the same time explaining to them the law upon the case when necessary. He then desires the jury to consider their verdict. If they withdraw to consider their verdict, the officer is sworn to take care of them, thus:—

"You shall well and truly keep the jury upon this inquiry without meat, drink, or fire: you shall not suffer any person to speak to them, nor you yourself, unless it be to ask them whether they be agreed to their verdict, until they shall be agreed." "So help you God."

The officer takes them to a convenient room, and attends the door on the outside until they are agreed; when agreed they return, and the coroner calls over their names, and afterwards asks them if they be agreed in their verdict; if the foreman replies in the affirmative, the coroner asks them "who shall say for you?" to which they reply "our foreman." Then the coroner says, "Mr. Foreman, how do you find that R. F. came to his death, and by what means?" The foreman then delivers the verdict, which the coroner records.

It seems that twelve at least must agree if there be no division; but if there be a division, the coroner then collects their voices, beginning with the last on the pannel and rising upwards to the foreman, who declares last. The coroner collects the numbers, and declares the majority into which the minority sinks, and the finding (which is to be given by the foreman) is from necessity, taken and considered as the verdict of all. When the verdict is given, the coroner then draws up his inquisition in form, and at the foot affixes a seal for himself and each of the jurymen. The coroner and jurors then sign their names opposite the seals; to the coroner's name he adds "the office" thus, G. H. "*coroner.*"

The inquisition being thus completed, the coroner then addresses the jury as follows:—

"Gentlemen, harken to your verdict, as delivered by you, and as I have recorded it. You find, &c." *(Here repeat the substance of the verdict.)*

If it is a case that will come to the assizes, the coroner binds all proper persons over in a recognizance to appear and give evidence, with the following condition:—

"The condition of this recognizance is such, that if the above bounden J. R,, E. D. and G. B. do severally appear at the next session of general goal delivery, to be holden in and for the said Home District, and then and there give evidence upon a bill of indictment to be then and there preferred to the grand jury against C. D. late of the township of —— in said district, labourer, for the wilful murder of R. F. late of —— &c. And in case the said bill of indictment be found by the grand jury a true bill, then if they the said J. R., E. D. and G. B. do severally appear and give evidence to the jury that shall pass on the trial of the said C. D. upon the said indictment: and in case the said bill of indictment shall be returned by the grand jury aforesaid "not found," then if they the said J. R., E. D. and G. B. do severally appear at the said session of general gaol delivery, and then and there give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me one of his Majesty's coroner for the said Home District, on the view of the body of the said R. F. and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force. Taken and acknowledged this —— day of —— before me, —— coroner.

If one of the witnesses be a married woman, and the husband not present to enter into a recognizance for her, she is not to be bound in any sum penal, but "on pain of imprisonment," thus: S. the wife of J. S. of &c., labourer, on pain of imprisonment, in case she shall make default in such condition; if the husband be present he is to be bound for the appearance of his wife: and if the witness happen to be an infant, (or minor under the age of twenty-one years) the parent or master should be bound in a recognizance for his appearance.

Form of a Recognizance by Husband and Wife.

Home District, } Be it remembered that J. P. of the township of ——
to wit. } in the county of —— in the Home District, yeoman, and E. P. his wife, severally acknowledged themselves to be bound by recognizance to our sovereign lord the King, as follows, that is to say, the said J. P. in the sum of £20 of lawful money of the province of Upper Canada, to be levied on his goods and chattels, lands and tenements, and the said E. P. his wife, on pain of imprisonment in case default shall be made in the condition following:— The condition of this recognizance is such that if the said E. P. the wife of the said J. P. do and shall personally appear, &c. *(as in the former recognizance.)*

The above form will also do for an infant and his parent or master.

The officer of the court then makes proclamation thus, "You good men of this township, who have been impannelled and sworn of the jury to inquire for our sovereign lord the King touching the death of R. F. and who have returned your verdict, may depart hence and take your ease. God save the King."

When the coroner returns his inquisition to the sessions, he first engrosses it on parchment, indented at the top, and in words at length, and such return is to be made under his hand and seal only with the name of his office. *Umfrev.* 312.

The following forms of inquisitions, summonses, warrants, &c. are transcribed from *Impey's Office of Coroner.*

Form of an Inquisition on a Lunatic.

Home District, } An inquisition indented, taken for our sovereign
to wit. } lord the King, at the township of ——— in the county of ——— in the Home district, the ——— day of ——— in the ——— year of the reign of our sovereign lord William the fourth, &c. before T. S. gentleman, one of the coroners of our said lord the King, for the said district, on view of the body of R. F. then and there lying dead, upon the oath of A. B. &c. *(here insert the names of all the jurors sworn,)* good and lawful men of the said township, duly chosen, and who being then and there duly sworn and charged to inquire for our said lord the King, when, where, how, and after what manner, the said R. F. came to his death, do, upon their oath, say, that the said R. F. not being of sound mind, memory and understanding, but lunatic and distracted, on the ——— day of ——— in the year aforesaid, at the township, and in the county, and district aforesaid, to wit, into the river Humber there, did cast and throw himself, by means of which said casting and throwing, he the said R. F. in the waters of the said river, was then and there suffocated and drowned; of which said suffocation and drowning, he the said R. F. then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F. in manner and by the means aforesaid, not being of sound mind, memory, and understanding, but lunatic and distracted, did drown and kill himself. In witness whereof, as well the said coroner as the jurors aforesaid, have to this inquisition set their hands and seals, on the day and year, and at the place first above mentioned.

G. H. *Coroner*, L. S.
A. B. L. S.
C. D. L. S.
E. F. L. S.
&c.

Felo de se, by Drowning.

That the said R. F. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on ——— with force and arms, at the township aforesaid, and in the county and district aforesaid, in and upon himself, in the peace of God, and of our said lord the King, then and there being feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said R. F. into a certain river or stream of water, commonly called ——— at the township aforesaid, in the county and district aforesaid, did violently cast and throw himself, by

means of which said casting and throwing, he the said R. F. in the waters of the said river, was then and there suffocated and drowned, of which said suffocation and drowning, he the said R. F. then and there instanly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said R. F. in manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder himself, against the peace of our said lord the King, his crown and dignity;—and that the said R. F. at the time of the said felony and murder, so as aforesaid done and committed, had no goods or chattels, lands or tenements, within the said district, or elsewhere, to the knowledge of the said jurors;—(or that the said R. F. at the time of the doing and committing of the felony and murder aforesaid, had goods and chattels, contained in the inventory to this inquisition annexed, which remain in the custody of C. D. who claims the same.) In witness, &c.

Upon an Accidental Death occasioned by a Cart.

That W. C. late of the township aforesaid, in the county and district aforesaid, carman, on —at the township aforesaid, in the county and district aforesaid, into a certain public street or highway, there called the King's high-way, being negligently driving a certain cart, drawn by one horse, and loaded with twelve barrels of flour; it so happened, that the said A. P. being in the street and high-way aforesaid, was then and there accidentally, casually, and by misfortune, forced to the ground by the horse so drawing the said cart as aforesaid, and the said cart so loaded as aforesaid, was then and there, by the said horse violently and forcibly drawn to and against the said A. P. and the off wheel of the said cart, so drawn and loaded as aforesaid, did then and there accidentally, casually and by misfortune, violently go upon, and pass over the breast and body of the said A. P. by means whereof, the said A. P. from the weight and pressure of the said cart, so loaded and drawn as aforesaid, did then and there receive one mortal bruise in and upon his said breast and body, of which said mortal bruise, he the said A. P. then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. P. in manner and by the means aforesaid, accidentally, casually, and by misfortune, came to his death, and not otherwise; and that the said horse, cart, and loading were the cause of the death of the said A. P. and that the said twelve barrels of flour are of the value of ——— the said cart of the value of ——— and the said horse of the value of ——— amounting in the whole, to the sum of ——— of lawful money of the province of Upper Canada, and are the property and in the possession of D. E. of ——— yeoman, or of his assigns. In witness, &c.

If it be intended to impose a nominal fine or deodand only, then say, "and that the said horse, cart, and loading are of the value of five shillings of lawful money, &c." *(as before.)*

By a Fire.—That on —— at, &c. the ware-house of C. D. situate in the same township and county, casually took fire, and the said A. B. being then and there present, aiding and assisting

to extinguish the said fire; it so happened, that a piece of timber, by the force and violence of the said fire, then and there accidentally, casually, and by misfortune, fell from the top of the said ware-house, in and upon the head of him, the said A. B. by reason whereof, he the said A. B. then and there received a mortal fracture on the head of him, the said A. B. of which said mortal fracture, he the said A. B. from the said —— day of —— in the year aforesaid, until the —— day of —— in the year aforesaid, there did languish, and languishing did live; on which said —— day of —— in the year aforesaid, at the township aforesaid, in the county and district aforesaid, he the said A. B. of the mortal fracture aforesaid, did die. And so the jurors aforesaid, &c. and that the said piece of timber was the occasion of the death of the said A. B. and is of no value: (or is of the value of, &c.) and in the possession, &c. In witness, &c.

By Drowning.—That the said A. B. on —— aforesaid, in a certain river, called —— at the township, and in the county and district aforesaid, accidentally, casually, and by misfortune, was in the waters of the said river, then and there suffocated and drowned; of which said suffocation and drowning, he the said A. B. then and there instantly died. And so the jurors, &c.

Natural Death.—That the said A. B. on —— and for a long time before at, &c. did labour and languish under a grievous disease of body, to wit, an asthma; and that on the said —— day of —— in the year aforesaid, at, &c. she the said A. B. departed this life, by the visitation of God, in a natural way, to wit, of the disease and distemper aforesaid, and not by any hurt or injury received from any person, to the knowledge of the said jurors.—In witness, &c.

Found Dead.—That the said A. B. on, &c. at, &c. in a certain brick-field, in the possession of one C. D. was found dead.—That he the said A. B. for some time before, had been very ailing and infirm, and not able to work: that he had no marks of violence appearing on his body, and departed this life by the visitation of God, in a natural way, to wit, of his said ailment and infirmity, and not by any violent means whatsoever, to the knowledge of the said jurors. In witness, &c.

Stranger found Dead.—That the said man, unknown, on, &c. at, &c. to wit, in a certain wood, there called the long wood, was found dead. That the said man, unknown, had no marks of violence appearing on his body; but how, or by what means he came to his death, no evidence thereof, doth appear to the said jurors. In witness, &c.

By Excessive Drinking.—That the said A. B. on, &c. at, &c. departed this life by excessive drinking of ardent spirits, and not

from any hurt, injury or violence done or committed by any person or persons whatsoever, to the knowledge of the said jurors. In witness, &c.

Inclemency of the Weather.—That the said man, unknown, was found dead in a certain lane, situated in the said township, commonly called ——— that the said man, unknown, had no marks of violence appearing on his body, but died through want, and the inclemency of the weather, and by no violent ways or means whatsoever, to the knowledge of the said jurors. In witness, &c.

Death in Prison.—That the said A. B. being a prisoner for debt in the gaol of ——— at, &c. in the gaol aforesaid, departed this life by the visitation of God, in a natural way, to wit, of a fever, and not otherwise. In witness, &c.

Falling out of a Boat.—That the said C. D. on, &c. being in a certain boat, with a certain sail and oars, the property of him, the said C. D. at, &c. it so happened, that by the violence of the wind and waves, the said boat was then and there accidentally, casually, and by misfortune, upset, by means whereof, the said C. D. was then and there accidentally, casually, and by misfortune, cast and thrown into the waters of the said river, and in the waters of the said river, was then and there suffocated and drowned, of which said suffocation and drowning, he the said C. D. then and there died. And so the jurors, &c. and that the said boat, and the sail and oars thereof, did occasion the death of the said C. D. and are of the value of 10*s.* and in the possession of ——— or his assigns. In witness, &c.

Murder.—That C. D. late of, *&c.* labourer, not having the fear of God before his eyes, but moved and seduced by the instigation of the devil, on, *&c.* with force and arms, at, *&c.* in and upon the said A. B. in the peace of God, and of our said lord the King, then and there being feloniously, [wilfully, and of his malice aforethought,] did make an assault, and that the said C. D. with a certain iron poker of the value of 1*s.* which the said C. D. then and there had and held in both his hands, him the said A. B. in and upon the head of him the said A. B. then and there, divers times, feloniously, [wilfully, and of his malice aforethought,] did strike and beat, then and there giving unto him, the said A. B. in and upon the back part of the head of him, the said A. B. with the iron poker aforesaid, one mortal fracture of the length of two inches, of which said mortal fracture, he the said A. B. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D. him, the said A. B. in manner, and by the means aforesaid, feloniously, [wilfully, and of his malice aforethought,] did kill and murder, against the peace of our lord the King, his crown and dignity,

said felony and murder aforesaid, withdrew and fled for the same, and that neither at the time of the doing and committing thereof, nor at any time since, he the said C. D. had any goods or chattels, lands or tenements within the said district or elsewhere, to the knowledge of the said jurors. In witness, &c.

Man-slaughter.—The form is precisely the same, except, that the words "wilfully and of his malice aforethought," are to be left out, and the words "feloniously did kill and slay," substituted for "kill and murder," and the word "manslaughter," for "murder," in another part.—See the parts marked with brackets.

Se Defendendo.

That on the —— day of —— in the year aforesaid, at the township aforesaid, in the district aforesaid, the said A. B. being in a certain common drinking room belonging to a public house there situate, known by the name or sign of —— in which said common drinking room one C. D. late of the township aforesaid, in the district aforesaid, labourer, and divers other persons was and were then and there present; and that the said A. B. without any cause or provocation whatsoever given by the said C. D. did then and there menace and threaten the said C. D. to turn him the said C. D. out of the said common drinking room, and for that purpose did then and there lay hold of the person of him the said C. D. and on him the said C. D. in the peace of God and of our said lord the king then and there being, violently did make an assault, and him the said C. D. without any cause or provocation whatsoever did then and there beat, abuse and evilly entreat, whereupon the said C. D. for the preservation and safety of his person and of inevitable necessity, did then and there with the hands of him the said C. D. defend himself against such the violent assault of him the said A. B. as it was lawful for him to do; and the said A. B. did then and there receive, against the will of him the said C. D., by the falls and blows which he the said A. B. then and there sustained by him the said C. D's. so defending himself as aforesaid, divers mortal bruises, in and upon the head, back and loins of him the said A. B. of which said mortal bruises he the said A. B. from the said —— day of —— in the year aforesaid, until the —— day of the same month in the same year, at the township aforesaid, in the county and district aforesaid, did languish &c. [*as in a former precedent*]; and so the jurors aforesaid, upon their oath aforesaid, do say that the said C. D., him the said A. B. in the defence of himself, the said C. D. in manner and by the means aforesaid, did kill and slay: but what goods or chattels the said C. D. had at the time of the doing and committing the said manslaughter in his own defence as aforesaid, the said jurors know not. In witness &c.

By drowning a Bastard.—That A. B. late of &c.—— single-woman, on &c. ——— being then and there big with a female child, afterwards to wit, on the same day and year, at the township aforesaid, in the county and district aforesaid, the said female child, alone and secretly from her body, by the providence of God, did bring forth alive, which said female child by the laws of this province was a bastard; and that the said A. B. not having the fear of God &c. [as before] afterwards to wit, on the same day and year aforesaid, with force and arms, at the township aforesaid, in the county and district aforesaid, in and upon the said new-born female child so alive, and in the peace of God and of our said lord the king then and there being, feloniously, wilfully and of her malice aforethough, did make an assault, and that the said A. B. her the said new-born female child with both her hands, in a certain linen cloth of no value, then and there feloniously, wilfully and of her malice aforethought, did wrap up and fold, by means of which said wrapping up and folding of her the said new-born female bastard child, in the linen cloth aforesaid, she the said new born female child was then and there suffocated and smothered, of which said suffocation and smothering she the said new-born female child then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said A. B. her the said new-born female bastard child, in manner and by the means aforesaid, feloniously, wilfully and of her malice aforethought, did kill and murder, against the peace of our lord the king his crown and dignity, [flight, forfeiture,—as before]. In witness &c.

By throwing down a Privy.—And that the said A. B. him the said new-born male child, did then and there take into both her hands, and him the said new-born male child into a certain privy, or necessary house, there situate, then and there feloniously, wilfully and of her malice aforethought, did violently cast and throw down, by means whereof, he the said new-born male child, in the soil or filth then and there contained in the said privy or necessary house, was then and there suffocated and smothered, of which said suffocation and smothering he the said new-born male child then and there instantly died; and so the jurors, &c. [as before] [flight, forfeiture—as before]. In witness &c.

Against Aiders and Abettors, in Murder or Manslaughter.—And the jurors aforesaid, upon their oath aforesaid, do further say that S. W. late of &c.—— labourer, and G. W. late of the same place, labourer, at the time of the doing and committing of the felony and murder, *(or felony and manslaughter)* aforesaid, were present, aiding, abetting, assisting, comforting and maintaining the said C. D. to kill and murder, *(or kill and slay)* the said A. B. in manner aforesaid; and so the jurors aforesaid, upon

their oath aforesaid, do say that the said C. D. and E. F. him the said A. B. in manner and by the means aforesaid, feloniously, wilfully and of their malice aforethought, did kill and murder, *(and in cases of manslaughter say, feloniously did kill and slay)*, against the peace &c. *(conclude with flight and forfeiture)*. In witness &c.

Form of the Warrant to Summon a Jury.

To the constables of the township of —— in the —— district, and others his Majesty's officers of the peace in and for the said district.

—— District, } By virtue of my office, these are in his Majesty's
to wit. } name to charge and command you, that on sight hereof you summon and warn twenty-four able and sufficient men of your township, personally to be and appear before me, on —— the —— day of —— at —— o'clock in the forenoon, at the house of A. B. called or known by the name or sign of the —— situate at —— in the said township, then and there to do and execute all such things that shall be given them in charge on behalf of our Sovereign Lord the King's Majesty, touching the death of R. F., and for so doing this shall be your sufficient warrant: and that you also attend at the time and place above mentioned, to make a return of the names of the persons whom you have so summoned, and further to do and execute such other matters as shall be then and there enjoined you, and have you then there this warrant. Given under my hand and seal, this —— day of —— 183 . G. H. *Coroner.*

N. B.—The Coroner should furnish a sufficient number of printed or written summonses to the constable for service on the Jurors.

Form of the Constables Summons.

—— District, } By virtue of a warrant under the hand and seal of
to wit. } G. H. gentleman, one of his Majesty's coroners for this district, you are hereby summoned personally to be and appear before him as a juryman, on the —— day of —— at —— of the clock in the forenoon, precisely, at the house of —— known by the sign of the —— in the township of —— in the said district, then and there to inquire in his Majesty's behalf, touching the death of R. F., and further to do and execute such other matters and things as shall be then and there given you in charge, and not to depart without leave. Herein fail not at your peril. Dated the ——— day of ——— in the year of our Lord 183

Constable.

Warrant to Bury after a View.

To the minister and churchwardens of the township of —— in the —— district, and to all others whom it may concern.

—— District, } Whereas I, with my inquest, the day and year
to wit. } hereunder written, have taken a view of the body of J. D. who not being of sound mind, memory and understanding, but lunatic and distracted, shot himself, [*or agreeably to the finding of the jury*] who now lies dead in your township, and have proceeded therein according to law. These are therefore to certify that you may lawfully permit the body of the said J. D. to be buried: and for so doing this shall be your warrant. Given under my hand and seal the —— day of —— *Coroner.*

Warrant to Bury a felo de se, after Inquisition found.

To the churchwardens and constables of the township of —— in the district of ——

—— District, } Whereas by an inquisition taken before me, one
to wit. } of his Majesty's coroner's for the said district, this —— day of —— in the —— year of the reign of his present Majesty, King William the Fourth, at the township of —— in the said district, on view of the body of J. D. then and there lying dead, the jurors in the said inquisition named, have found that the said J. D. felloniously, wilfully and of his malice aforethought killed and murdered himself, [*as the finding may be*] these are therefore, by virtue of my office, to will and require you forthwith to cause the body of the said J. D. to be buried according to law: and for your so doing this is your warrant. Given under my hand and seal this —— day of —— G. H.
Coroner.

N. B. The last form of warrant should not be directed to the minister.

The Return thereto.

By virtue of the within warrant to us directed, we have caused the body within named to be buried according to law.

C. D. } *Churchwardens.*
E. F. }
I. D. *Constable.*

Warrant to Bury without a View where no effectual Inquest can be taken.

To the ministers and churchwardens in the township of —— in the —— district.

—— District, } Whereas I am credibly informed that on the ——
to wit. } day of —— the body of a new born male

child was found dead in a coffin, in the churchyard of the said township, and that there is not any evidence to be found to make appear to a jury either by what means the said male child was there laid, or who was the mother thereof, or how it came to his death, nor are there any marks of violence appearing on its body. These are therefore to certify that in case of the district charge you may permit the body of the said new born male child to be buried: and for so doing this is your warrant. Given under my hand and seal this —— day of —— J. H. *Coroner.*

Another form of Warrant to Bury without a View.

To the minister and churchwardens of the township of —— in —— district.

—— District, } Whereas I am credibly informed, that on the
to wit. } —— day of —— instant, A. B. died suddenly in the street, to wit, [*name the street*] in the township of —— in the said district, as supposed by a fit of an apoplexy or other sudden visitation of God, and that he came not to his death by any violent means or manner whatsoever. These are therefore to certify that in case of the district charge you may permit the body of the said A. B. to be buried: and for so doing this shall be your warrant. Given under my hand and seal this —— day of —— J. H. *Coroner.*

Warrant to Bury without a View, when the Body was found Drowned.

To the minister and churchwardens of the township of —— in the —— district.

—— District, } Whereas I am credibly informed that on the
to wit. } —— day of —— the body of a man unknown was taken up dead, and floating in the river —— in the township of —— in the said district, and that no marks of violence do appear on the body of the said man unknown; and whereas there is no evidence to make appear to a jury how or by what means the said man unknown came to his death. These are therefore to certify that in case of the district charge you may permit the body of the said man unknown to be buried: and for so doing this is your warrant. Given under my hand and seal this —— day of ——. J. H. *Coroner.*

Warrant to take up a Body Interred.

To the minister and church-wardens of the township of —— in the —— district.

—— District, } Whereas, complaint hath been made unto me,
to wit. } one of his Majesty's coroners for the said dis-

trict, on the —— day of —— (that the body of one) G. R. was privately and secretly buried in your township, and that the said G. R. died not of a natural, but violent death: and whereas, no notice of the violent death of the said G. R. hath been given to any of his Majesty's coroners for the said district, whereby, on his Majesty's behalf, an inquisition might have been taken on view of the body of the said G. R. before his interment, as by law is required. These are therefore, by virtue of my office, in his Majesty's name, to charge and command you, that you forthwith cause the body of the said G. R. to be taken up and safely conveyed to —— in the said township, that I, with my inquest, may have a view thereof, and proceed therein according to law.— Hereof fail not, as you will answer the contrary at your peril.— Given under my hand and seal, the —— day of ——.

J. H. *Coroner.*

Warrant to Apprehend a Person for Murder.

To the constables of the township of —— in the —— district, and to all others, his Majesty's peace officers in the said district.

—— District, } Whereas, by an inquisition taken before me ——
to wit. } one of his Majesty's coroners for the said district, this —— day of —— at —— in the said district, on view of the body of G. R. then and there lying dead, one C. D. late of —— in the said district, labourer, stands charged with the wilful murder of the said G. R. these are therefore, by virtue of my office, in his Majesty's name, to charge and command you, and every of you, that you some or one of you, without delay, do apprehend and bring before me —— the said coroner, or one of his Majesty's justices of the peace of the said district, the body of the said C. D. of whom you shall have notice, that he may be dealt with according to law. And for your so doing, this is your warrant. Given under my hand and seal, this —— day of ——

G. H., *Coroner.*

Commitment for Murder.

To the constables of the township of —— in the Home district, and other his Majesty's officers of the peace for the said district, and to the keeper of his Majesty's gaol, at —— in the said district.

—— District, } Whereas, by an inquisition taken before me, one
to wit. } of his Majesty's coroners for the said district, the day and year hereunder mentioned, on view of the body of R.

L. lying dead in the said township of —— in the district aforesaid, J. K. late of the township of —— in the said district, labourer, stands charged with the wilful murder of the said R. L. These are therefore, by virtue of my office in his Majesty's name, to charge and command you, the said constables and others aforesaid, or any of you, forthwith safely to convey the body of the said J. K. to his Majesty's gaol at —— aforesaid, and safely to deliver him to the keeper of the said gaol; and these are likewise by virtue of my said office, in his Majesty's name, to will and require you, the said keeper, to receive the body of the said J. K. into your custody, and him safely to keep in the said gaol, until he shall be thence discharged by due course of law. And for so doing, this is your warrant. Given under my hand and seal the —— day of —— J. H. *Coroner.*

Summons to a Witness.

To A. P. of the the township of —— in the —— district, yeoman.

—— District, } Whereas I am credibly informed that you can
to wit. } give evidence on behalf of your sovereign lord the King, touching the death of A. P. now lying dead in the township of —— in the said district. These are therefore, by virtue of my office, in his Majesty's name to charge and command you personally to be and appear before me, at the dwelling-house of J. R. known by the sign of —— situate at —— in the said township, at —— o'clock in the forenoon, on the —— day of —— instant, then and there to give evidence and be examined on his Majesty's behalf before me and my inquest touching the premises: herein fail not, as you will answer the contrary at your peril. Given under my hand seal this —— day of ——

J. H. *Coroner.*

Warrant for Contempt against a Witness for not appearing to give Evidence.

To the constables of the township of —— in the —— district, and to all other his Majesty's officers of the peace in and for the same district.

—— District, } Whereas I have received credible information
to wit. } that A. P. of the township of —— in the said district, surgeon, can give evidence on behalf of our sovereign lord the King touching the death of C. D. now lying dead in the said township; and whereas the said A. P. (having been duly summoned to appear and give evidence before me and my inquest touching the premises, at the time and place in the said

summons specified, of which oath hath been duly made before me,) hath refused and neglected so to do, to the great hindrance and delay of justice. These are therefore, by virtue of my office, in his Majesty's name to charge and command you, or one of you, without delay to apprehend and bring before me, one of his Majesty's coroners for the said district, now sitting at the township aforesaid, by virtue of my said office, the body of the said C. D. that he may be dealt with according to law: and for your so doing this is your warrant. Given under my hand seal the —— day of ——

J. H. *Coroner.*

Warrant to Commit a Witness refusing to give Evidence, &c.

To the constables of the township of —— in the —— district, and other his Majesty's officers of the peace in and for the district aforesaid, and also to the keeper of the gaol in the said district.

—— —— } Whereas I heretofore issued my summons under my
to wit. } hand, directed to A. P. of &c., surgeon, requiring his personal appearance before me, then and now one of his Majesty's coroners for the said district, at the time and place therein mentioned, to give evidence and be examined on his Majesty's behalf touching and concerning the death of C. D. then and there lying dead, of the personal service of which said summons oath hath been duly made before me; and whereas the said A. P. having neglected and refused to appear pursuant to the contents of the said summons, I thereupon afterwards issued my warrant, under my hand and seal, in order that the said A. P. by virtue thereof might be apprehended and brought before me to answer the premises. And whereas the said A. P. in pursuance thereof hath been apprehended and brought before me, now duly sitting by virtue of my office, and hath been duly required to give evidence and be examined before me and my inquest on his said Majesty's behalf, touching the death of the said C. D. yet the said A. P. notwithstanding, hath absolutely and wilfully refused, and still doth wilfully and absolutely refuse to give evidence and be examined touching the premises, or to give sufficient reason for his refusal, in wilful and open violation and delay of justice: these are therefore, by virtue of my office, in his Majesty's name to charge and command you, or any one of you, the said constables and officers of the peace in and for the said township and district, forthwith to convey the body of the said A. P. to the gaol of the said district, at the city of Toronto, and him safely to deliver to the keeper of said gaol; and these are likewise, by virtue of my said office, in his Majesty's name to will and require

you the said keeper to receive the body of the said A. P. into your custody, and him safely to keep until he shall consent to give his evidence and be examined before me and my inquest, on his Majesty's behalf, touching the death of the said C. D. or until he shall be from thence otherwise discharged by due course of law: and for so doing this is your warrant. Given under my hand and seal the —— day of ——

J. H. *Coroner.*

Commitment of a Witness for refusing to sign his Information.

To the constables of the township of —— in the —— district, and others his Majesty's officers of the peace in and for the said district, and also to the keeper of the gaol of the said district.

—— —— } Whereas A. B. of —— surgeon, is a material
to wit. } witness on behalf of our sovereign lord the King, against J. P. late of the township of —— in the district aforesaid, labourer, now charged before me one of his Majesty's coroners for the said district and my inquest, with the wilful murder of C. D. there now lying dead; and whereas the said A. B. at this time of my inquiry, on view of the body of the said C. D. how and by what means he the said C. D. came by his death, hath personally appeared before me and my said inquest, and on his Majesty's behalf hath given evidence and information on oath touching the premises, which said information having by me been reduced into writing, and the contents thereof by me, in the presence of the said inquest, openly and truly read to him the said A. B. who doth acknowledge the same to be true, and that the same doth contain the full substance and effect of the evidence by him given before me to my said inquest, and the said A. B. having by me been requested and desired to sign and set his hand to his said testimony and information, and to acknowledge the same as by law is required, yet, notwithstanding, the said A. B. doth wilfully and absolutely refuse so to do, in open defiance of law, and to the great hindrance of public justice. These are therefore, by virtue of my office, in his Majesty's name to charge and command you, or one of you, the said constables and others his Majesty's officers of the peace in and for the said district, forthwith to convey the body of the said A. B. to the gaol of the said district, at —— in the said district, and him safely to deliver to the keeper of the said gaol; and these are likewise, by virtue of my said office, in his Majesty's name to will and require you the said keeper to receive the body of the said A. B. into your custody, and him safely to keep in prison until he shall duly sign and acknowledge his said information, or shall be from thence otherwise discharged by due

course of law: and for so doing this is your warrant. Given under my hand and seal this ——— day of ——

J. H. *Coroner.*

Commitment of a Witness for refusing to enter into Recognizance to appear and give Evidence.

To the constables of the township of —— in the —— district, and others his Majesty's officers of the peace in and for the same district, and also to the keeper of the gaol of the said district.

—— —— } to wit. Whereas upon an inquisition this day taken before me, one of his Majesty's coroners for the district aforesaid, at —— in the said district, on view of the body of C. D. then and there lying dead, one J. U. late of the township aforesaid, in the district aforesaid labourer, was by my inquest then and there sitting, found guilty of the wilful murder of the said C. D.; and whereas one U. P. of the township and district aforesaid, yeoman, was then and there examined and gave information in writing before me and my inquest touching the premises, and which said information he the said U. P. then and there before me and my inquest duly signed and acknowledged, and by which said information it appears that the said U. P. is a material witness on his Majesty's behalf, against the said J. U. now in custody, and charged by my inquest with the said murder, and the said U. P. having wilfully and absolutely refused to enter into the usual recognizance for his personal appearance at the next general gaol delivery, to be holden in and for the —— district aforesaid, and then and there to give evidence on his Majesty's behalf against the said J. U. to the great hindrance and delay of justice. These are therefore, by virtue of my office, in his Majesty's name to charge and command you, or one of you, the said constables and others his Majesty's officers of the peace in and for the said district, forthwith to convey the body of the said U. P. to the gaol of the said district, at —— in the said district, and him safely to deliver to the keeper of the said gaol there; and these are likewise by virtue of my said office in his Majesty's name to will and require you the said keeper to receive the body of the said A. B. into your custody, and him safely to keep in prison there until he shall enter into such recognizance before me, or before one of his Majesty's justices of the peace for the said district, for the purposes aforesaid, or in default thereof, until he shall be from thence otherwise discharged by due course of law: and for so doing this is your warrant. Given under my hand and seal this —— day of ——

J. H. *Coroner.*

Recognizance to Prosecute and give Evidence.

—— District, } Be it remembered that J. R. of &c. yeoman, and
to wit. } E. D. of the same place, labourer, do severally acknowledge to owe to our sovereign lord the King the sum of —— pounds each, of lawful money of Upper Canada, to be levied on their several goods and chattels, lands and tenements, by way of recognizance to his Majesty's use, in case default shall happen to be made in the condition hereunder written.

The condition of this recognizance is such, that if the above bounden J. R. and E. D. do severally personally appear at the next general gaol delivery, to be holden in and for the —— district, and the said J. R. shall then and there prefer, or cause to be preferred to the grand jury, a bill of indictment against C. D. late of —— labourer, and now in custody for the wilful murder of A. B. late of &c., and that the said J. R. and E. D. do then and there severally personally appear to give evidence upon such bill of indictment to the said grand jury, and in case the said bill of indictment be found by the grand jury a true bill, that then the said J. R. and E. D. do severally personally appear at the said general gaol delivery, and the said J. R. shall then and there prosecute the said C. D. on such indictment, and the said J. R. and E. D. do then and there severally give evidence to the jury that shall pass on the trial of the said C. D. touching the premises, and in case the said bill of indictment shall be returned not found, that then they do severally personally appear at the said general gaol delivery, and then and there prosecute and give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of his Majesty's coroners for the said —— district, on view of the body of the said A. B. and not depart the court without leave, then this recognizance to be void, otherwise to remain in full force. Taken and acknowledged this —— day of —— before me

J. H. *Coroner.*

If a wife be required to give evidence, and her husband be not present to enter into recognizance, the wife should not be bound in any penalty or sum of money, but on *pain* of imprisonment thus:—"S. the wife of J. S. of &c., labourer, acknowledges herself to be bound to our sovereign lord the King on pain of imprisonment, in case she shall make default in the following condition." And in making out the recognizance insert her name in such condition. But if the husband be present he should be bound for the appearance of his wife. So if the witness happen to be an apprentice, or one under the age of twenty-one years, in law termed an *infant*, the master or the parent should be bound for the appearance of the party according to the following precedent:—

Recognizance by Husband for Wife's appearance, and by Master, &c. for the appearance of an Apprentice, &c.

—— District, } J. P. of the township of —— in the said district,
to wit. } black-smith; T. P. of the same place, victualler; J. R. of the same place, white-smith, the husband of S. R.; J. B. of the same place, shop-keeper, the *mainpernor* of J. J. his apprentice, an *infant;* J. S. of the same place, yeoman, the mainpernor of G. S. his son, an infant, do severally acknowledge to owe to our sovereign lord the King the sum of —— pounds, of lawful money of Upper Canada, to be levied on their goods and chattels, lands and tenements, by way of recognizance to his Majesty's use, in case default shall be made in the condition following. And S. the wife of J. P. of the same place, labourer, on pain of imprisonment, in case she shall make default in such condition.

The condition of this recognizance is such, that if the above bounden J. P.,T. R., S. R. the wife of the said J. R., J. J.,G. S. and S. P. do severally personally appear at the next general gaol delivery to be holden in and for the —— district, and there give evidence on a bill of indictment to be preferred against W. T. now at large for the wilful murder of S. his wife, and in case the said bill of indictment shall be returned by the grand jury a true bill, then that they do severally personally appear at the session of general gaol delivery for the said district next after the apprehending or surrender of the said W. T. and then and there severally give evidence to the jury that shall pass on the trial of the said W. T. touching the premises, and in case the said bill of indictment shall be returned by the grand jury not found, that then they do severally personally appear at such session of general gaol delivery to be then and there holden for the said district, and then and there give evidence to the jury that shall pass upon the trial of the said W. T. upon an inquisition taken before me, one of his Majesty's coroners for the said district, on view of the body of the said S. T. and not depart the court without leave, then this recognizance to be void, otherwise to be and remain in force.— Taken and acknowledged this —— day of ——

J. H. *Coroner.*

Coroner's Certificate of Jurors in order for Bail before Justices of the Peace.

—— District, } These are to certify that by an inquisition taken
to wit. } before me on view of the body of C. D. at the township of —— in the said district, bearing date the —— day of —— instant, the jurors in the said inquisition named have

found that A. B. justifiably and of inevitable necessity did kill and slay the said C. D. Given under my hand this ——— day of ——

J. H. *Coroner.*

Or in defence of himself and for the safety of his life and property, as against thieves justifiably, &c.

Or casually and by misfortune, and against the will of the said A. B. *(as in a chance medley.)*

ELEMENTS OF CONVEYANCING.

1.—*Of Real Property.*

REAL property is usually comprised under the terms, "lands, tenements, and hereditaments," and consists of land, and all rights and profits arising out of and annexed to land which are of a permanent and immovable nature. *Atkinson on Conveyancing, p.* 1. A grant of "the profits" of land carries the land itself; but a grant of the vesture, or "herbage," it should seem, gives an interest only in the surface. "Water" does not include the land on which it stands. *Ib.*

2.—*Of Personal Property.*

Personal property is also of two kinds; the one partaking of the nature of real property, and arising out of some modification of it, as a *term of years*, which is called a *chattel real;* the other consisting of things moveable, as furniture, ships, stock in trade, jewellery, money, &c. which are called chattels personal. Besides these denominations of property, there is another called *choses in action*, which may be a modification either of real or personal property. Annuities, book debts, and all other monies due on contract, are *choses in action;*—corporation bonds are also properly *choses in action.*

3.—*Of Estates in Fee.*

An estate descendible to a man and his heirs for ever, free from any qualification or condition, is an estate in fee simple, or absolute; such an estate confers upon the proprietor the entire, uncontrolled owner-ship, and he may alien, subject to any conditions which are not repugnant to law; and if he does not alien, it is descendible at his death to all his heirs direct, and collateral in the remotest degree.

By the constitutional act of the 31 *G.* 3. § 43. It is expressly enacted, "that all lands which shall be hereafter granted within the said province of Upper Canada, shall be granted 'in free and common soccage,' in like manner as lands are now holden in free and common soccage, in that part of Great Britain, called England."

"Free and common soccage" is another term only for "fee simple," or "freehold."

4.—*By what Words an Estate in Fee Simple may be Created.*

1st. *In Deeds.*—To the creation, or transfer of an estate in fee, by deeds, words of inheritance are essential. If the limitation be

to an individual in his private capacity, the limitation must be to him *and his heirs;* if to a sole corporation, to the *corporate person and his successors.* A grant in a deed to a man and his "assigns," or to him and "his assigns for ever," or to him in "fee simple," or to him and his "successsors," or so long as the grantor, his heirs and assigns shall hold other lands in which he has a fee simple, will pass no more than an *estate for life.*—*Atk.* 9.

2nd. *In Wills.*—In the interpretation of these instruments, the intention of the testator is the regulating principle; hence, where it can be clearly collected from the whole context of the will, that it was the testator's intention to give the absolute ownership; in real property courts of law have always held, that an estate in simple should pass, notwithstanding the absence of words "of inheritance." The word "estate," when unrestrained by words of *locality*, or particular description, will pass the fee. So the word "property," in a will, may carry the entire fee in real estate. *Per. Gibbs, C. J. in Denn. v. Hood, 7 Taunt.* 35.—The word "reversion," will pass a fee. *Cowper v. Martin, 1 T. R.* 140. So the words "all his right." *Hodgkinson v. Star.* 1 *Ld. Ray.* 187. "Title and interest." *Rawlinson v. Cole, Ld. Ray.* 831. Or the word "interest" alone. *Andrew v. Southcrete, 5 T. R.* 292. Without going into further detail, it may be laid down as a general rule, that no particular form of words is necessary to pass an inheritance in a will. Where there is a clear intention to will away the property, the title of the heir will never be preferred, thus: "all my worldly substance," "all that I am worth," "all my worldly estate," will pass real estate, and the inheritance in it. *Atk. Conv.* 11.

The rules of law in the above respect, have been further enlarged by the 4 *W.* 4. *c.* 1. which enacts, "that whenever land is or shall be devised in a will, made by any person who shall die after the passing of this act, it shall be considered, that the devisor intended to devise all such estate as he was seised of in the same, whether fee simple or otherwise, unless it shall appear on the face of the will, that he intended to devise only an estate for life, or a lesser estate."

5.—*Of the Descent of Real Estate in cases of Intestacy.*

If a person seised in fee simple of any real estate, die intestate, or without a will duly executed and attested, his real estate will devolve upon his *heir at law*, who will be his eldest son, or the issue of his eldest son, if dead.

If there be no son, or issue living of any son, then the real estate will descend to all the intestate's daughters, equally, as *coparceners.*

If there be neither son or daughter, nor issue of any kind living of the deceased, formerly the real estate would have descended to the deceased's brother and his issue, or a sister, and so on, to the exclusion of his parents. The half-blood were also entirely excluded; but now, by a recent statute the 4 *W.* 4. *c.* 1. It is provided, that the father, or mother of the deceased, failing issue of his own, shall inherit his real estate, in preference of the deceased's brother or sister.

The same act, also provides, that the male line shall be preferred to the female, and no maternal ancestor, nor any of her descendants, shall be capable of inheriting, until all his male maternal ancestors and their descendants shall have failed. § 6.

The half-blood shall also be capable of being heir, next after any relation in the same degree of the whole-blood and his issue, when the common ancestor shall be a male; so that the brother of the half-blood, on the part of the father, shall inherit next after the sisters of the whole-blood, on the part of the father, and their issue; and the brother of the half-blood, on the part of the mother, shall inherit next after the mother. § 8.

If a person seised, die without any known heirs, his estate will revert to the crown.

6.—*Liability of Estates in Fee Simple to the Payment of Debts.*

Estates in fee simple, are liable to the payment of all debts contracted by the owner, for which he has bound himself and his heirs, by any instrument under his *seal:* the heir is bound to satisfy such debts, as far as the lands descended to him from such ancestor will extend: which lands are called in law, *assets by descent.*

By the "act against fraudulent devises," 3 & 4 *W.* & *M. c.* 14. made perpetual by 6 & 7 *W. c.* 14. after stating in the preamble, that "it is not reasonable or just, that by the practice or contrivance of any debtors, their creditors should be defrauded of their just debts, and nevertheless, it hath often so happened that where several persons having, by bonds, or other specialties, bound themselves and their heirs, and have afterwards died seised in fee simple of and in manors, messuages, lands, tenements, and hereditaments, or had power, or authority to dispose of, or charge the same by their wills or testaments, have, to the defrauding of such their creditors, by their last wills or testaments devised the same, or disposed thereof, in such a manner as such their creditors have lost their debts;—"therefore" for the maintaining of just and upright dealing, it enacts, "that all wills, testaments, limitations, dispositions, or appointments of lands, or of any rent, profit, term

or charge out of the same, whereof any person at the time of his decease, shall be seised in *fee simple*, in possession, reversion, or remainder, or hath *power to dispose of the same* by his last will or testament, (as against such creditor, his heirs, successors, administrators, and assigns,) shall be deemed *fraudulent*, and clearly, absolutely, and utterly *void*, frustrate, and of none effect; and every such creditor shall and may have, and maintain his action of debt, upon his said bonds and specialties, against the heir and heirs at law of such obligor or obligors, and such devisee and devisees jointly, by virtue of this act." § 3.

The act then proceeds to state, "that heirs at law, to avoid payment of such just debts as in regard of such lands descending to them they were liable to pay, had aliened them," and therefore enacts, that "in all cases where any heir at law shall be liable to pay the debt of the ancestor, in regard of any lands, &c. descending to him, and shall sell, alien, and make over the same, before any action brought, or process sued out against him, that such heir at law shall be answerable for such debt or debts, in an action or actions of debt to the value of the said land, so by him sold, aliened, or made over. § 5.

The act lastly proceeds to make the "devisee" liable in all cases in which it had made the heir liable to the debts of his ancestor.

7.—*Of the Creation of Estates Tail.*

Estates tail are either *general* or *special*; general where only one parent is specified, from whom the issue must be derived; special where both are designated. *Litt.* § 14. 15. 16. 29.

The proper words for the creation of an estate tail in a will are, to a man and the *heirs of his body*; but any words manifesting an intention to confine the gift to the issue of the devisees body, will have the same effect.

Of the Alienation of Estates Tail.

The tenant in tail has the whole estate of inheritance in him, and may therefore divest himself of it by any species of assurance; but the effect of his alienation is materially varied by the mode of assurance he adopts. *Atk. Conv.* 25.

The only conveyances that work a discontinuance of the inheritance are a *feoffment* with livery of seisin, a *fine* with proclamations, or a *common recovery*: and these conveyances are said to be *tortious*, or to work *tortiously*.

The other class of conveyances, which create no discontinuance, are leases for years, leases for lives, lease and release, grant,

bargain and sale, covenant to stand seized, release or confirmation in enlargement of the estate. 1 *Prest. Abst.* 362. If the tenant in tail by any of these latter conveyances attempt to pass an estate of inheritance, he will in effect transfer a base fee, determinable: 1st, By failure of issue; and 2ndly, By the entry of his issue after his death. If he transfer by the former species of conveyance, the assurance operates by virtue of a power confided in him by law, discontinues the estate tail, and commences a new title under a wrongful seisin; it suspends the title under the estate tail, and gives a new title to an estate in fee simple by force of the alienation. 1 *Prest. Abst.* 364.

A fine with proclamations and a common recovery are, however, two species of assurance peculiar to the Court of "Common Pleas" in England, and the author is not aware of any such remedy having been recognized by the courts of law of this province.

8.—*Definition of an Estate by Curtesy.*

By marriage the husband acquires an estate for life in such lands or tenements of his wife as she was seised of in fee simple or fee tail, upon having issue by her born alive, that may by *possibility* inherit the estate by descent from her. This estate is called an estate by curtesy. *Litt.* § 35. 52.

If, however, there should happen to be no issue of the marriage, and the wife die, her real estate will immediately descend to her heir at law, and the husband's interest therein will cease.—The wife and husband may, however, together, in her life time, convey away her real estate, but she cannot dispose thereof by will during the coverture.

9.—*Of Estates in Dower.*

By marriage the wife becomes entitled to an *estate for life* upon surviving her husband, in a *third* part of all estates of inheritance of which he was *solely* seised at any time during the marriage, and which her issue by this marriage might by possibility have inherited. The interest of the wife is termed her DOWER, and is the provision which the common law has made for her support and the nurture and education of her children. 2 *Bl. Com.* 130. To the consummation of her title to dower three things are essential: 1. A legal and canonical marriage; 2. Seisin; 3d. And the death of her husband. *Litt.* § 36. Where there is an exchange of lands the widow may elect from which of the lands she will have her dower. *Co. Litt.* 31. *b. Perk.* § 319. A woman is not dowable of an estate tail unless her issue be capable of inheriting it. *Litt.* § 35. An alien cannot be endowed unless

she be Queen consort, for no alien is capable of holding lands. *Co. Litt.* 31.

In regard to the husband's "seisin" the law has been recently altered by the 4th *W.* 4th, *c.* 1. § 14. which gives the wife dower without seisin, if the husband shall have been entitled to a right of entry or action; under the same statute widows are entitled to dower also in *equitable* estates *(except joint tenancy,)* § 13.

With respect to the mode of barring dower, see ante title "Dower," p. 156, and Addenda p. 1.

10.—*Of Joint Tenants.*

Joint tenancy arises when any persons hold property between them in equal shares by purchase, as where two or more persons purchase lands, and take a conveyance to them and their heirs; this is a joint tenancy, and the legal estate will go to the survivor. 2 *Bl. Com.* 180., *Moyse v. Giles*, 2 *Vern.* 385. During the time they hold *jointly* neither of them has an estate in any particular part. Each has the whole with benefit of survivorship, unless the tenancy be severed.

But now by the 4. *W.* 4. *c.* 1. § 48. whenever by any letters patent, assurance, or will, executed after the 1st of July, 1834, land shall be granted, conveyed, or devised to two or more persons (other than executors or trustees) in fee simple, or for any less estate, it shall be considered that such persons take as *tenants in common*, and not as joint tenants, unless an intention sufficiently appears on the face of the instrument to the contrary.

11.—*Of Coparceners.*

Tenancy in coparcenary arises where several persons have by *descent* a tenement among them in common, by equal proportions as co-heirs in equal degree; or by unequal proportions, as co-heirs in different degrees. Their right to the possession is common, and they have several and distinct estates. Each has a power of alienation by deed or will over his share, in the same manner as a tenant in common. For example, A. dies seised without male issue, but leaving two daughters; these children will be joint heiresses and coparceners in the real estate. If one of them should die, leaving issue, such issue will inherit his or her parent's share, and be a coparcener with the other surviving coparcener. Coparceners, or joint tenants, may release to each other. *Co. Litt.* 163. *a.* But not so with tenants in common, they must convey. *Co. Litt.* 200.

12.—*Of Tenants in Common.*

Tenancy in common is where several persons have distinct estates, either of the same or a different quantity, in any subject of property in equal or unequal shares, and either by the same or by several acts. *Atkin. Com.* 225. A tenancy in common may be created by express limitation in a deed, as if lands be given to two persons, to have and to hold, the one moiety to one and his heirs, and the other moiety to the other and his heirs, they are tenants in common. *Litt.* § 298. Tenancies in common descend to the heirs of each of the tenants, because they have several freeholds, and not an entirety of interests like joint tenants, and therefore there is no survivorship between them, but each may alienate or devise by will his moiety to any person or persons he may think proper.

13.—*Of the Partition of Real Estates held in Joint Tenancy—Tenancy in Common—or in Coparcenary.*

By the 3. *W.* 4. *c.* 2. entitled an act to provide for partition of real estates, after reciting, "that in many cases much inconvenience is experienced from the want of some court competent to order the partition of lands held in joint tenancy, tenancy in common, and coparcenary," it is enacted "that all joint tenants, tenants in common, and coparceners of any estate or estates in any lands tenements, or hereditaments within this province, may be compelled to make or suffer partition of such estates in manner hereinafter prescribed; and when such estates are situate in two or more districts, the proceedings under this act shall be heard before K. B. and if in one district only, then before the district court, or the court of K. B." § 1. The act then proceeds to direct that any person being a joint tenant, &c. or the executor, administrator, guardian, or agent of any such person, may file his or her petition in the court of K. B. or district court, praying partition, and setting forth the claimants title, and the court shall proceed at the same term to order and direct a partition to be made, provided that due notice has been given, and no sufficient reason alleged against such petition. The writ of partition is to be directed to the sheriff, commanding him by the oaths of three disinterested freeholders of the vicinity, to be appointed by the court, and named in the writ, who are not of kin to the parties, to cause to be set off and divided to the demandant in the said petition, such part or proportion of such estates as the court shall have ordered; and in making such partition it shall be the duty of such freeholders to view and examine such estate or estates, to set apart the same in such lot or lots as will be most advantageous and

equitable, having due regard to the improvements, situation and quality of the different parts of such estates; and when partition has been made in the manner provided by the act, the same shall be described by metes and bounds, and a plan shall accompany the return to the court having cognizance thereof, and after the division and return thereof it shall be examined by the court, and if approved the clerk shall record such return, which record shall be deemed valid and effectual in law for the partition of such lands, tenements, or hereditaments, and thereupon the party or parties shall have and hold the shares or parcels to them respectively allotted in severalty. § 7.

But if after issuing of any writ of partition, the freeholders who are directed to make such partition, shall be of opinion that the estate cannot be divided without spoiling the whole, they shall return a true valuation and appraisement to the court, and if the court shall approve thereof, and if any one or more of the parties shall elect to take the same at the appraised value, the same shall be adjudged to him or them, he or they, paying, or securing to be paid, to the other parties their proportion of the appraised value, according to their respective rights; and the *sheriff* shall according to the order of the court, execute conveyances to the party or parties electing to take the same, subject to a lien thereon in favour of the other parties until payment shall be made; and in case the parties shall not agree who is to take the same, then the court may order a sale at public auction by the sheriff, giving twenty days previous notice in the newspapers of the district where the lands lie of such sale, and sixty days if in different districts: and the sheriff is authorised to execute deeds to the purchasers at such sale. § 6.

14.—*Of Judgments which Bind the Land.*

When a judgment in a suit of law has been obtained against a person seised of real estate, it is said to bind his land, which may be extended and sold to satisfy such judgment. As far as relates to purchasers *bona fide* for a valuable consideration, judgment affects the land, tenements and hereditaments of the party only from the time it is signed, to ascertain which, the master in signing judgment must mention on the record the time of signing it, and the same shall be stated on the margin of the judgment roll when the judgment is entered. 29 *C.* 2. *c.* 3. § 13. 14. 15. But as to all other persons but purchasers the judgment as it affects lands relates to the first day of the term of which it is signed, in the same manner as at common law. 30. *E.* 3. 24. *Archb. K. B. P.* 205. And it affects as well lands held in trust for the defendant,

as those of which he is actually seised. 29 *C. 2. c.* 3. § 10. 2 *Saund.* 10. *a. (n.* 17.*) Arch. K. B. P.* 205.

A purchaser, therefore, should be careful to satisfy himself previous to the payment of his purchase money, that there are no outstanding unsatisfied judgments against the land, otherwise after the completion of his purchase, he may be called upon to pay the amount of such judgments, or the land may be sold by the sheriff to satisfy the same.

The search is generally extended for a period of *ten* years, and if a judgment be found, then for another period of ten years, preceding the date of the judgment so found. *Atk. Conv.* 518.

It should be made in the K. B. and D. court of the district in which the lands lie.

15.—*Of Mortgages.*

A mortgage is the conveyance by the mortgagor of his estate to the mortgagee in fee simple, or by demise for a term of years, as a security for the payment of a sum borrowed, usually with a condition that the instrument shall be void, or that the mortgagee shall re-convey upon the payment of the mortgage money and interest within a limited time.

Upon the failure of this condition the mortgagees estate becomes absolute at law, and he may recover the premises by ejectment, and by the 4. *W.* 4. *c.* § 36. after twenty years possession, or receipt of the rents or profits of the land, the mortgagor shall be barred from his equity of redemption.

By stat. 7. *Geo.* 2. *c.* 20. it is an enacted, "that where any action shall be brought on any bond for payment of the money secured by such mortgage, or performance of the covenants therein contained, or where any action of ejectment shall be brought in any of the courts of record at Westminster, (and by the adoption of the law of England in this province, in the court of K. B. here) by any mortgagee, his heirs, executors, administrators, or assigns, for the recovery of the possession of any of the mortgaged lands; and no suit shall be then depending in any of his Majesty's courts of equity in England, for or touching the foreclosing or redeeming of such mortgaged lands, if the person having the right to redeem such mortgaged lands, and who shall appear and become defendant in such action, shall at any time pending such action pay unto such mortgagee, or in case of his refusal, shall bring into court where such action shall be depending, all the principal monies and interest due on such mortgage, and also all such costs as have been expended in any suit at law or in equity

upon such mortgage, (such money for principal, interest and costs, to be ascertained and computed by the court where such action is depending, or by the proper officer by such court to be appointed for that purpose) the monies so paid to such mortgagee or brought into such court, shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the court shall and may discharge every such mortgagor or defendant of and from the same accordingly, and shall and may, by rule of the same court, compel such mortgagee, at the costs of such mortgagor, to assign, surrender, or reconvey such mortgaged lands, and his estate and interest therein, and to deliver up all deeds unto such mortgagor, his heirs, executors or administrators, or to such person or persons as he or they shall appoint.

By the 4. *W.* 4. *c.* 16. it is enacted, that any certificate by any mortgagee, his heirs, executors, administrators or assigns, heretofore given, and registered under the provisions of the 35. *G.* 3. or which may be hereafter registered under the provisions of this act, given before or after the time limited by such mortgage, shall operate as a release of such mortgage, and as a conveyance of the original estate of the mortgagor therein named: but no such certificate, if given after the period limited for redemption, shall have the effect of defeating any title other than a title remaining vested in the mortgagee or his heirs, executors, or administrators.

16.—*Wills.*

Any person *seised* of freehold estate in fee simple, (but not in *fee tail*) may dispose of the same by his will.

Previous to the 4. *W.* 4. *c.* 1. *three* witnesses were necessary to the validity of a will of *real* estate, and no other estate would pass by such will than that which the testator was seised of at the time of making his will: but now by the above statute, *two* witnesses to any will executed *after* the passing of this act (March 6, 1834,) shall be sufficient; and if the will of any person who shall die after the passing of this act, shall contain a devise of "all such real estate as the testator shall die seised or possessed of," such will shall be effectual to pass any subsequently acquired property. § 49.

17.—*Of Titles Barred by lapse of Time.*

By stat. 4. *W.* 4. *c.* 1. Twenty years adverse possession shall bar the right of any person otherwise entitled, subject to various modifications and exceptions in favour of infants, married women, insane persons, wild lands, &c., for which a further period is

allowed according to circumstances, but not to extend beyond forty years in the whole. § 29.

Upon the trial of any action for land, if the plaintiff shall show, to the satisfaction of the court and jury, that he is entitled in justice to be regarded as the proprietor of the land, but cannot show a perfect legal title, it shall be competent to the jury, under the direction of the court, to find a verdict for the plaintiff, unless the defendant can show that he is legally entitled, or holds under the person who is so legally entitled. § 52.

Of the Registry of Deeds and Conveyances.

The 35. *G.* 3. *c.* 4. enacts, that a memorial of all deeds and conveyances, and of all wills and devises of land, may at the election of the party be registered; and that every deed or conveyance after any memorial so registered, made and executed of the lands, comprised in such memorial, shall be adjudged fraudulent and void against purchasers for valuable consideration, unless such memorial be registered as by this act directed, before the registering of the memorial of the deed under which such subsequent purchaser or mortgagee claims, and every devise by will of the lands contained in any memorial registered as aforesaid, made and published after the registering of such memorial, shall be void against a subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such will be registered as hereinafter directed. § 2.

Every memorial shall be in writing, under the hand and seal of some one or more of the grantors or grantees, his or their heirs, executors or administrators, guardians or trustees, attested by two witnesses, one of them being a witness to the execution of the deed, or conveyance, who shall upon oath before the registrar, or his deputy, prove the execution of such memorial, and of the deed or conveyance mentioned in such memorial, and in case of wills the memorial shall be under the hand and seal of some one or more of the devisees, his or their heirs, executors, &c., attested by two witnesses, one of whom shall prove on oath before the registrar, or his deputy, the execution of such memorial, and the registrar shall endorse a certificate thereof on every such memorial, and sign the same. § 4.

The registrars fee for entering every memorial is 2*s.* 6*d.*; if exceeding one hundred words, then in proportion of 1*s.* for every one hundred words above, and the like fee for every certificate or copy, and for every search 1*s.* 6*d.* and no more.

All memorials of wills must be registered within six months, unless some impediment occurs, and then within six months after the removal of such impediment. § 15.

18—*Of the usual Mode of Conveyance.*

The usual mode of conveyance in this province is by bargain and sale. Previous to the completion of the purchase the buyer should satisfy himself that the seller has a good title. Where the title has passed through several persons it will be prudent in the purchaser to submit the same to a skilful attorney, as it cannot be expected that a private individual unconnected with the profession can form an accurate opinion on the subject; and great care should be observed with regard to wills, many of which being drawn up by the parties themselves may be unskilfully worded. In purchasing, however, from the immediate grantee of the crown, little difficulty is to be apprehended. Printed forms of conveyance are to be obtained, and the purchaser himself, or some competent penman, may in such cases venture to fill up the blanks.

The purchaser should take care that the wife of the seller signs the deed, and appears before the justices or the chairman of the Q. S. to bar her dower, and that a memorial of the deed is duly registered.

Previous to the completion of the business the purchaser should also search at the register office of the county for mortgages or previous conveyances, which may affect the land, and for judgments in the court of K. B. and district court against the purchaser, and the assessment roll, to see if any arrears of taxes are due.

Purchasers at sheriff's sales should be equally guarded, as the sheriff's deed conveys no better title than the owner himself had in the land.

FORMS IN CONVEYANCING.

Agreement for the Purchase of Land.

Articles of agreement indented, had, made, concluded and fully agreed upon, this —— day of —— in the year of our Lord ——— *between* A. B. of —— of the one part, and C. D. of —— of the other part, as follows: (that is to say,) the said A. B. for the consideration of the sum of —— of lawful money of Upper Canada, to him in hand paid by the said C. D. at or before the sealing and delivery of these presents, the receipt whereof he the said A. B. doth hereby acknowledge, and in consideration of the further sum of ——— of like lawful money, to be paid as hereinafter mentioned, *doth* hereby for himself, his heirs, executors and

administrators, and every of them, *covenant* with the said C. D. his heirs, executors and administrators, and every of them by these presents, that he the said A. B. his heirs and assigns, and all and every other person or persons whatsoever, claiming or to claim any right, title, or interest under him or any other person or persons whatsoever of, in, or to the parcel of land and premises hereinafter mentioned, shall and will on or before the —— day of —— which will be in the year of our Lord —— by such conveyances, assurances, ways and means in the law as he the said C. D. his heirs or assigns, or his or their counsel in the law shall reasonably devise, advise or require, well and sufficiently grant, sell, release, convey and assure to the said C. D. and his heirs and assigns, or to whom he or they shall appoint or direct, *All that* parcel or tract of land, situate, lying and being in the township of —— [*here insert an accurate description of the premises,*] free from all incumbrances and demands whatsoever, except being subject to the several provisions and conditions contained in the original grant from the crown, and also shall and will enter into all fit and reasonable covenants for title usually inserted in deeds of conveyance of the like nature. *And further*, that until default shall be made by him the said C. D. his heirs, executors, or administrators, in the performance of his and their part of the terms of this agreement, it shall be lawful for the said C. D. his heirs and assigns, peaceably and quietly to enter into and upon, have, hold, use and enjoy, cultivate and improve the said land and premises without any interruption, denial, eviction or ejectment, by him the said A. B. his heirs or assigns, or any other person or persons lawfully claiming or to claim any estate, right, title, or interest of, in, or to the same premises, or any part thereof. *Provided always*, and it is the true intent and meaning of these presents, that the said parcel or tract of land hereinbefore particularly described, shall not be so bargained, sold, released, conveyed and assured unto the said C. D. in manner and form and at the time hereinbefore specified, unless he the said C. D. his heirs, executors, or administrators, some or one of them, shall well and truly have performed, executed and fulfilled the covenants hereinafter mentioned and expressed, to be by him or them performed, executed and fulfilled. *In consideration* whereof he the said C. D. for himself, his heirs, executors and administrators, doth covenant with the said A. B. his heirs, executors, administrators and assigns, by these presents, that he the said C. D. his heirs, executors, administrators or assigns, or some or one of them, shall and will well and truly pay or cause to be paid unto the said A. B. his heirs, executors, administrators or assigns, the aforesaid sum of —— of lawful money of Upper Canada, with lawful interest thereon from this date, in

manner and at the times hereinafter mentioned and expressed, that is to say, the sum of ——— part thereof, with lawful interest thereon from this date, on or before the ——— day of ——— the sum of ——— other part thereof, with lawful interest thereon from this date, on or before the ——— day of ——— the sum of ——— other part thereof, with lawful interest thereon from this date, on or before the ——— day of ——— and the sum of ——— residue thereof, with lawful interest thereon from this date, on or before the ——— day of ——— [or if it be intended that the interest upon the whole shall be paid annually, then leave out the interest in the preceding part, and add "together with lawful interest on the said sum of ——— or so much thereof as shall from time to time remain due and owing according to the terms of this agreement, such interest to be paid annually on the several days and times hereinbefore specified for the payment of the said several instalments]; *and also* shall and will bear, pay, and discharge at his own expense all rates and taxes which shall at any time hereafter be imposed upon or payable for or in respect of the said parcel or tract of land and premises. And for the true performance of all and every the covenants and agreements aforesaid, each of the said parties to these presents doth hereby bind himself, his heirs, executors and administrators, unto the other of them, his heirs, executors administrators in the penal sum of ——— of lawful money aforesaid. *In witness* whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of } A. B. [L. S.]
C. D. [L. S.]
G. H.
J. J.

Assignment of the Agreement.

To all to whom these presents shall come—Greeting.

Whereas the within named C. D. hath duly paid and satisfied to the within named A. B. two several instalments or sums of £10 each, mentioned and referred to in the within written [or hereunto annexed] articles of agreement, together with all interest due upon the whole amount up to the ——— day of ——— as appears by the receipts of the said A. B. hereupon endorsed *(or hereunto annexed); and whereas* the said C. D. hath contracted and agreed for the sale of the within mentioned premises, and all improvements thereon, to E. F. of ——— at and for the price or sum of £——— subject nevertheless to the payment of the instalments and interest now remaining due, pursuant to the within mentioned contract. *Now, know ye,* that the said C. D. for and

in consideration of the sum of ——— of good and lawful money of Upper Canada, to him in hand well and truly paid by the said E. F. the receipt whereof is hereby acknowledged, *hath* bargained, sold, assigned, transferred and set over, and by these presents *doth* bargain, sell, assign, transfer and set over, unto the said E. F. his heirs, executors, administrators and assigns, all the right, title and interest, of him the said C. D. of, in and to the within written articles of agreement, covenants, and the lands and premises therein referred to, and all improvements thereon, and all benefit and advantage to arise therefrom, or from the principal monies thereby secured. *To have and to hold*, receive and enjoy the said assigned premises unto the said E. F. his heirs, executors, administrators and assigns, from henceforth, for his and their own use and benefit for ever; *and the said* C. D. doth hereby make, ordain, authorise, constitute and appoint the said E. F. his heirs, executors and administrators, his true and lawful attorney and attornies, irrevocable for him the said C. D. and in his name, but for the sole use and benefit of the said E. F. his heirs, executors and administrators, to demand, sue for, recover and receive, of and from the within named A. B. his heirs, executors, or administrators, all such sum or sums of money and damages as shall or may at any time or times hereafter accrue, and grow due to him the said A. B. his heirs, executors, administrators or asssgns, under or by virtue of the said articles of agreement and covenant, or any matter, clause or thing therein contained, by reason or on account of the breach or default of him the said A. B. his heirs, executors or administrators in relation thereto; *and the said* C. D. for himself, his heirs, executors and administrators, doth hereby covenant with the said E. F. his heirs, executors and administrators, that he hath not done or suffered, and that he, his heirs, executors, or administrators, shall not nor will do or suffer any act, matter or thing whereby or by reason whereof the said E. F. his heirs, executors or administrators, shall or may be hindered or prevented from suing and prosecuting any action or actions, suit or suits for the recovery of any principal, money or damages under or by virtue of the said articles of agreement and covenant referred to, or such other satisfaction as can or may be had or obtained for the same by virtue hereof. In witness, &c.

Deed of Bargain and Sale.

This indenture, made the ——— day of ——— in the year of our Lord one thousand eight hundred and ——— between ——— *Witnesseth*, that the said ——— for and in consideration of the sum of ——— of lawful money of the said province, to him in

hand paid by the said ——— at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, transferred, conveyed, enfeoffed and confirmed, and by these presents doth grant, bargain, sell, alien, transfer, convey, enfeoff, and confirm unto the said ——— heirs and assigns for ever, all and singular th —— certain parcel or tract of land and premises, situate, lying and being in the ——— together with all the houses, out-houses, woods and waters thereon erected, lying and being, and all and singular the hereditaments and appurtenances to the said premises in any wise belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim, property and demand whatsoever, either at law or in equity, of him the said ——— of, in, to, or out of the same, and every part thereof. *To have and to hold* the same, with the appurtenances, freed and discharged from all incumbrances whatsoever, unto the said ——— heirs and assigns, to the sole and proper use, benefit and behoof of the said ——— heirs and assigns for ever, under the reservations, limitations and conditions expressed in the original grant from the crown. And the said ——— for himself and his heirs, executors and administrators, doth covenant, grant and agree, to and with the said —— heirs and assigns, that he the said —— now is the true, lawful and rightful owner of all and singular the said parcel or tract of land and premises above mentioned, with the appurtenances, and of every part and parcel thereof, and now is lawfully and rightfully seized in his own right, of a good, sure, perfect, absolute and indefeasible estate of inheritance in fee simple, of and in the premises hereby granted, bargained and sold, or intended to be granted, bargained and sold, without any condition or limitation of use or uses, or any other matter or thing to alter, charge, change, incumber, or defeat the same; and also, that ——— the said ——— heirs and assigns, shall and may, from time to time, and at all times hereafter for ever, peaceably and quietly enter into, have, hold, occupy, possess and enjoy, all and singular, the said premises above mentioned, and every part and parcel thereof, with the appurtenances, without the let, trouble, hindrance, molestation, interruption or denial of him the said —— his heirs or assigns, or any other person or persons whomsoever lawfully claiming or to claim, by, from or under him, them or any or either of them: and further, that he the said —— and his heirs, and all and every other person or persons whomsoever, having or lawfully claiming any estate, right, title, trust or interest, of, in, or to the said premises above mentioned, or any part thereof, by, from, or under him, them, or any or either of them, shall and will at all

times hereafter, upon the reasonable request, and at the proper costs and charges of the said ——— heirs and assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further and other lawful and reasonable act or acts, devices, conveyances and assurances in the law whatsoever, for the further, better and more perfect granting, conveying and assuring of all and singular the said premises above mentioned, with the appurtenances unto the said ——— heirs and assigns, as by the said ——— heirs or assigns, ——— or their counsel shall be reasonably devised, advised or required. ——— And also that the said ——— wife of the above named ——— for and in consideration of the sum of five shillings of lawful money as aforesaid, to her by the said ——— now in hand paid, hath remised, released, and for ever relinquished, and by these presents doth remise, release, and for ever relinquish unto ——— the said ——— heirs, executors, administrators and assigns, all and all manner of dower and right or title of dower whatsoever, which she the said ——— in the event of surviving the said ——— her husband, might or of right ought to have or claim in, to, and out of the said certain parcel or tract of land and premises above mentioned, and every part and parcel thereof, and all manner of action or actions, and writ or writs of dower whatsover. In witness whereof the parties to these presents have hereunto set their hands and seals, the day and year first above written, and in the ——— year of his Majesty's reign.

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

Bar of Dower.

——— District, } ——— before me ——— personally appeared the within named ——— and being duly examined by me, touching her consent to be barred of her dower, of and in the lands within described, she gave her consent thereto, and it did appear to me that such consent was free and voluntary, and not the effect of coercion, or fear of coercion on the part of husband or any other person. Given under my hand, this ——— day of——— in the year of our Lord one thousand eight hundred and ———

Receipt to be Endorsed on the Bargain and Sale.

Received on the day of the date of the within written indenture, of and from the within named ——— the sum of ——— of lawful money of Upper Canada, being the full consideration money in the said indenture mentioned, to be paid by ——— to ———

Witness

Memorial of Bargain and Sale.

A memorial to be registered pursuant to the statute in such case made and provided, of an indenture of bargain and sale, made the —— day of —— in the year of our Lord one thousand eight hundred and——between —— of the one part, and——of the other part; whereby the said —— for and in consideration of the sum of —— of lawful money of the said province, to —— in hand paid by the said —— the receipt whereof is acknowledged, did grant, bargain, sell, alien, transfer, convey, enfeoff and confirm, unto the said —— heirs and assigns, for ever, all and singular th certain parcel and tract of land and premises, situate, lying and being in the —— together with all houses, out-houses, woods and waters thereon erected, lying and being. And all and singular, the hereditaments and appurtenances to the said premises in anywise belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim, property and demand whatsoever, either at law or in equity, of —— the said —— of, in, to or out of the same, and every part thereof; under the reservations, limitations and conditions, expressed in the original grant from the crown. *To have and to hold* the same, with the appurtenances, freed and discharged from all incumbrances whatsoever, unto the said —— heirs and assigns, to the sole and proper use, benefit and behoof of the said —— heirs and assigns for ever. Upon which indenture is endorsed a certificate of —— declaring that — wife of the said —— personally appeared before him, and being duly examined by him, touching her consent to be barrred of her dower of and in the lands therein described, she gave her consent thereto, and that it did appear to him that such consent was free and voluntary, and not the effect of coercion, or the fear of coercion, on the part of her husband or any other person, and which said indenture is witnessed by —— and this memorial thereof is hereby required to be registered by —— the said grant therein named. Witness —— hand and seal at —— the —— day of —— in the year of our Lord one thousand eight hundred and —— Signed and sealed in the presence of ——

MORTGAGE IN FEE.

This Indenture, made the —— day of —— in the year of our Lord —— *between* H. K. of —— yeoman, and S. his wife of the one part, and J. W. of —— of the other part. *Witnesseth*, that in consideration of the sum of £—— of good and lawful current money of Upper Canada, by the said J. W. to the said H. K. in hand paid, at or before the sealing and delivery of these

presents, the receipt whereof is hereby acknowledged. He, the said H. K. hath granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, convey, and confirm unto the said J. W. and to his heirs, all, &c. *(describing the lot, or premises)* together with all ways, paths, passages, waters, water-courses, privileges, advantages, and appurtenances whatsoever to the said premises, hereby granted and conveyed, belonging, or in any wise appertaining; and the reversion and reversions, remainder, and remainders, rents, issues, and profits of the same; and all the estate, right, title, and interest, both at law and in equity, of him, the said H. K. of, in, to, or out of the same premises, *to have and to hold* the said parcel, or tract of land and premises hereinbefore granted and conveyed, with their appurtenances, unto and to the only proper use and behoof of the said J. W. his heirs and assigns for ever, subject nevertheless to the proviso for redemption hereinafter contained; *and this indenture also witnesseth*, that the said S. the wife of the said H. K. in consideration of the sum of five shillings of lawful and current money aforesaid, to her now paid by the said J. W. *hath* remised, re-leased, and for ever relinquished, and by these presents *doth* remise, re-lease, and for ever relinquish unto him, the said J. W. his heirs and assigns, *all* and all manner of dower and right, or title of dower whatsoever, which, she the said S. in the event of her surviving the said H. K. her husband, might, or of right, ought to have, or claim, in, to, and out of the said parcel, or tract of land and premises above mentioned, and every part and parcel thereof, and all manner of action or actions, and writ or writs of dower whatsoever. Provided always, and these presents are upon this express condition, that if the said H. K. his heirs, executors, administrators, or assigns shall and do, well and truly pay unto the said J. W. his executors, administrators, or assigns, the full and just sum of £—— of lawful and current money as aforesaid, with interest for the same, after the rate of *six* pounds for every one hundred pounds, for a year, on or before the —— day of —— now next ensuing, without any deduction, or abatement, then these presents shall be void; *and the said* H. K. for himself, his heirs, executors and administrators doth hereby covenant with the said J. W. his executors, administrators, and assigns, that he, the said H. K. his heirs, executors, administrators, or assigns, shall and will, well and truly pay unto the said J. W. his executors, administrators, or assigns, the said sum of £—— with interest for the same, after the rate, and at the time, and in manner aforesaid; *and the said* H. K. doth hereby for himself, his heirs and assigns, also covenant with the said J. W. his heirs and assign, in manner following, that is to

say, that he, the said H. K. now hath good right by these presents, to grant, bargain, sell, alien, convey, and confirm all the aforesaid premises unto and to the use of the said J. W. his heirs and assigns in manner aforesaid; *and also*, that from and after default shall happen to be made, in payment of the said sum of £——— and the interest thereof, contrary to the true, intent, and meaning of these presents, it shall be lawful for the said J. W. his heirs and assigns, peaceably and quietly to enter into, have, hold, and enjoy the said premises, and receive, and take the rents, issues and profits thereof, to his and their own use, without any interruption or denial of the said H. K. and S. his wife, or either of them, their, or either of their heirs, or assigns, or of any other person, or persons whomsoever, and that free and clear, and freely and clearly acquitted, exonerated and discharged from all former and other grants, bargains, sales, mortgages, titles, charges and incumbrances whatsoever; *and that* they, the said H. K. and S. his wife, and his heirs, and all other persons whomsoever, claiming any estate, or interest in the premises, shall, and will, from time to time, and at all times, from and after default in payment of the said sum of £——— and interest thereof, as aforesaid, upon the reasonable request of the said J.W. his heirs, or assigns, execute all such further, and other lawful, and reasonable deeds, conveyances, and assurances, for the further, better, more perfectly and absolutely conveying and assuring the said premises unto and to the use of the said J. W. his heirs and assigns, as by the said J. W. his heirs, or assigns, or his, or their counsel in the law shall be lawfully required; *and lastly*, it is hereby declared, and agreed by and between the said parties to these presents, that until default shall happen to be made of or in the payment of the said sum of £——— and the interest thereof, contrary the true intent and meaning of the above written proviso, it shall be lawful for the said H. K. his heirs and assigns, peaceably and quietly to have, hold and enjoy the said premises, and receive and take the rents and profits thereof, without any interruption or denial by the said J. W. his heirs, or assigns, or of any person or persons whomsoever, claiming under him or them.

In witness, &c.

Receipt to be Indorsed on the Mortgage, and Signed by the Receiver.

Received on the day of the date of the within indenture of mortgage, of and from the within named J W. the sum of £———

being the full consideration within expressed to be by him paid to me.

H. K.

Witness,
G. H.

For the form of a mortgage bond, see *post* "Bonds."

Memorial of a Mortgage in Fee.

Memorial of an indenture of mortgage, dated the ——— day of ——— made between, &c. [as in the preceding form]—*to hold* unto, and to the only proper use and behoof of the said J. W. his heirs and assigns for ever, subject to a proviso, that the same shall be void on the payment of the sum of ——— and interest for the same, at the rate of six pounds for every one hundred pounds for a year, on the ——— day of ——— which said indenture of mortgage is witnessed by ——— and is hereby required to be registered pursuant to law, by me, the said ——— the grantor (or grantee) in the said mortgage. As witness, &c.

K. L.

Signed, sealed and delivered in the presence of
A. B., C. D.

Conveyance by the Mortgagee in Possession, to a Purchaser of Mortgaged Premises.

This indenture, &c. between (the mortgagee of the one part,) and (the purchaser of the other part.) *Whereas*, by an indenture of mortgage, bearing date, the ——— day of ——— and made between A. B. of ——— and C. B. his wife, of the one part, and the said (mortgagee) of the other part, in consideration of the sum of ——— to him, the said A. B. paid by the said (mortgagee) he the said A. B. did grant, bargain, sell, alien, convey, and confirm unto the said (mortgagee) and to his heirs, all, &c. (describing the premises)—*to hold* unto, and to the use of the said (mortgagee) his heirs and assigns for ever, with a proviso, that if the said A. B. did and should pay unto the said (mortgagee) the full and just sum of ——— together with interest thereon, at the rate of six pounds for every one hundred pounds for a year, on or before the ——— day of ——— then next and now past, that then the said recited indenture of mortgage should be void; *and whereas*, the said sum of ——— and interest thereon, was not paid at the time limited and appointed for payment of the same in and by the said proviso, whereby the estate of the said (mort-

gagee) in the said premises, became absolute at law; *and whereas*, the said principal sum of —— and all interest thereon, from the date of the said mortgage, remain due and unpaid to the said (mortgagee) and the said (mortgagee) hath contracted and agreed with the said (purchaser) for the sale of the said premises to him at the price, or sum of —— *now this indenture witnesseth*, that in consideration of the sum of —— *(and then proceed as in an ordinary conveyance.)*

Mortgage by Demise, for a Term of 500 *Years.*

This indenture, made the —— day of —— in the year of our Lord —— between A. B. of —— and C. B. his wife, of the one part, and G. H. of —— of the other part, *witnesseth*, that in consideration of the sum of —— of good and lawful money of Upper Canada, to the said A. B. paid by the said G. H. at or before the execution of these presents, the receipt whereof, is hereby acknowledged. He, the said A. B. *hath* granted, bargained, sold and demised, and by these presents *doth* grant, bargain, sell and demise unto the said G. H. his executors, administrators and assigns, all that, &c. [*describing the premises,*] and the reversion and reversions, remainder and remainders, rents, issues and profits of all and singular the said premises, to have and to hold the said parcel or tract of land and premises hereby demised as aforesaid, with their appurtenances, unto the said G. H. his executors, administrators and assigns, from the day next before the day of the date of these presents, for and during, and unto the full end and term of 500 years, from thence next ensuing, and fully to be complete and ended. And the said C. B. &c. [*here add the bar of dower*]; provided always, and these presents are upon this express condition, that if the said A. B. his heirs, executors or administrators, do and shall well and truly pay unto the said G. H. his executors, administrators or assigns, the full sum of —— of lawful and current money aforesaid, with interest for the same, after the rate of £6 for every £100 for a year, on or before the —— day of —— now next ensuing, without any deduction or abatement, these presents and the term hereby granted, shall be void. *And the said* A. B. doth hereby for himself, his heirs, executors and administrators, covenant with the said G. H. his executors, administrators and assigns, that he, the said A. B. his heirs, executors or administrators, or some, or one of them, shall and will well and truly pay unto the said G. H. his executors, administrators or assigns, the said sum of —— and interest thereon, at the rate aforesaid, on or at the day, or time, and in the manner above limited for payment thereof, in and by the above proviso. In witness, &c.

Add a receipt on the back for the mortgage money.

A Certificate of Mortgage Money being Paid.—85 *G.* 3. *c.* 5.

I, J. W. of —— do hereby certify, that W. D. of —— hath paid and satisfied all such sum and sums of money as were due and owing upon a mortgage, made by the said W. D. to me, bearing date, the —— day of —— and registered at —— of the clock in the forenoon of the —— day of —— following, in the full discharge of the same; and I do hereby require an entry of such payment, and satisfaction to be made pursuant to the act of the legislature, in that case made and provided. As witness my hand, this —— day of ——.

[Signed] J. W.

Attested by W. M. of —— and J. H. of ——.

Memorandum—That upon the certificate of the within named J. W. dated the —— day of —— proved by the oaths of W. M. of —— and J. H. of —— that all monies due on the within mentioned mortgage, are fully paid and satisfied in discharge of the same: this entry in discharge thereof, is made pursuant to the said act of the legislature, this —— day of —— by

T. J., *Registrar.*

Assignment by the Mortgagee of the Term to a Purchaser.

This indenture, &c. between, &c. [then recite the mortgage in a similar form to the recital in the preceding form, with due regard to the term, &c.] *Now this indenture witnesseth*, that in consideration, &c. He, the said (mortgagee) hath bargained, sold, assigned, transferred and set over, and by these presents doth bargain, sell, assign, transfer and set over unto the said (purchaser) his executors, administrators and assigns, all, &c. *to have and to hold* the said parcel or tract of land, and all and singular other the premises hereby assigned unto the said (purchaser) his executors, administrators and assigns, for and during all the rest, residue and remainder, now to come and unexpired, of and in the said term of 500 years, free from all incumbrances; *and the said* (mortgagee) doth hereby, for himself, his heirs, executors and administrators, covenant with the said purchaser, his heirs, executors, administrators and assigns, that the said term of 500 years, by the said recited indenture of mortgage granted, is now a good, valid and subsisting term, and that he, the said (mortgagor) now hath in himself, good right to assign the said parcel or tract of land and premises unto him, the said (purchaser) his executors, administrators and assigns, for all the remainder of the said term; *and moreover*, that he, the

said (purchaser) shall and lawfully may peaceably and quietly have, hold and enjoy the said premises for all the remainder of the said term, now to come, without any disturbance, interruption or denial by the said (mortgagee) his executors or administrators, or by the said (mortgagor) his heirs or assigns, or any person or persons claiming under any or either of them, and that freely and clearly exonerated and discharged from all incumbrances whatsoever; *and further*, that he, the said (mortgagor) his executors and administrators, and all persons claiming under him or them, or any of them, shall and will, at the request, costs and charges, of the said (purchaser) his executors, administrators or assigns, execute all such further and other assignments and assurances, for the further and better assigning and assuring the said premises unto him, the said (purchaser) his executors, administrators and assigns, for the remainder of said term, as by him or them, or his, or their counsel in the law shall be reasonably required.

In witness, &c.

Add a receipt for the purchase money.

Memorial of an indenture of assignment, &c. [which may be easily framed from the preceding forms.]

(If any deeds are executed within the county in which the lands lie, the affidavit of the execution must be made before the registrar of the county, but if executed out of the county, it may be then sworn before a commissioner of the K. B.)

Form of the Affidavit before a Commissioner.

Upper Canada. } A. B. of ——— maketh oath and saith, that he
—— District, } was personally present, and did see the within
to wit. } named grantor (or grantee) C. D. duly sign, seal, and as his act and deed, deliver the indenture of bargain and seal (or mortgage,) of which the within is a memorial, and that he was also personally present, and did see the said within named grantor (or grantee) C.D. duly sign and seal the within memorial for the registry thereof, and that he, this deponent, is a subscribing witness to the said indenture of bargain and sale (or mortgage,) and also to the within memorial, and further, that both the said instruments were executed without the county of ——

Sworn before me at ——
in the district aforesaid, the ——
day of—— 18— } A. B.

E. F.

A Commissioner King's Bench, —— District.

BILL OF SALE.

Bill of Sale of Goods and Chattels.

Know all men by these presents, that I, A. B. of —— in consideration of the sum of —— to me in hand paid by C. D. of —— at or before the sealing and delivery of these presents, the receipt whereof I do hereby acknowledge, *have* granted, bargained, sold and confirmed, and by these presents *do* grant, bargain, sell and confirm unto the said C. D. *all* and singular the goods and chattels mentioned in the schedule hereunto annexed, now being in and upon or about the dwelling house and premises of the said A. B., situate at —— *To have and to hold* the goods and chattels aforesaid, and every of them, by these presents, bargained and sold unto and to the only proper use and behoof of the said C. D. his executors, administrators and assigns for, ever, freely, quietly, peaceably and without any contradiction, claim, disturbance, or hindrance of any person whatsoever, and without any account to me or to any other person whatsoever, to be made, answered, or hereafter to be rendered, so that neither I, the said A. B. or any other for me, or in my name, any right, title, interest, or demand of, in, to, or for the said goods and chattels, or any part or parcel thereof, ought to exact, challenge, claim or demand at any time or times hereafter, but from all action, right, estate, title, claim, demand possession and interest thereof, shall be wholly barred and excluded by force and virtue of these presents; and I, the said A. B. for myself, my executors and administrators, all and singular the said goods and chattels unto the said C. D. his executors, administrators and assigns, against me the said A. B. my executors, administrators and assigns, and against all and every other person or persons whatsoever, shall and will warrant and for ever defend by these presents, of which goods and chattels I the said A. B. have put the said C. D. in full possession, by delivering him (one chair) in the name of all the said goods and chattels at the sealing and delivery hereof. In witness whereof I have hereunto set my hand seal, the —— day of ——

Sealed and delivered, and possession of the goods and chattels above bargained and sold, given by the said A. B. to the said C. D. by the said A. B.'s delivering to the said C. D. one chair in the name of the whole goods and chattels, in the presence of ——— } A. B. (SEAL.)

Or Livery of Possession may be Endorsed, thus.

Memorandum.—On the day and year within written, possession of the goods and chattels within bargained and sold was delivered

by the said A. B. to the said C. D. by the said A. B.'s giving to the said C. D. one chair in the name of livery and possession of the whole, in the presence of ——.

By stat. 13. *Eliz. c.* 5. § 2. (made perpetual by stat. 29. *Eliz. c.* 5.) every conveyance of goods and chattels, &c. with intent to delay or defraud creditors of their just actions and debts, shall be void as against creditors. Therefore, notwithstanding the formal delivery of one article in the name of the whole, the bill of sale will be deemed fraudulent against creditors unless the *possession* of the goods and chattels actually accompany and follow the deed, (in cases where the deed is not conditional). 2 *Durnf.* and *East.* 587. *Edwards v. Harben Ex. of Tempest Mercer.* If the change of property be *bona fide* and notorious, the statute will not affect it. So where the goods of A. were seized by the sheriff upon a *fi. fa.* and sold to B. *bona fide* upon a valuable consideration, though B. permitted A. to remain in possession of the goods, upon condition that A. should pay the money as he should raise it by sale of the goods, this was held to be lawful by *Lord Holt. Cole v. Davies.* 1 *Ld. Raym.* 724. It has also been held that if B. lend A. money to buy the goods, and having taken an assignment of them as a security for the debt, permit A to remain in possession, it would not be fraudulent. *Kidd v. Rowlinson.* 2 *Bos.* and *Pul.* 59.

In *Lord Cadogan v. Kennett*, Lord Mansfield said, "the question in every case is, whether the act done is a *bona fide* transaction, or whether it is a trick or contrivance to defeat creditors."

Actual delivery of the goods is not absolutely necessary to render the transaction good, where the nature of the subject renders it impracticable, or where acts equivalent to delivery have been done, as assignments, of goods at sea, with the delivery of the paper documents, or the delivery of the key of the warehouse in which the goods are contained. *Manton, v. Moore*, 7. *T. R.* 67.

Mortgage of Goods.

This indenture made, &c. between A. B. of the one part, and C. D. of the other part. *Witnesseth* that the said A. B. in consideration of the sum of —— of good and lawful money of the province of Upper Canada, advanced and paid by the said C. D. to the said A. B. at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *hath* granted, bargained and sold, and by these presents *doth* grant, bargain and sell, unto the said C. D. his executors, administrators and

assigns, all and singular the several goods and chattels mentioned and specified in the schedule hereunder written *(or hereunto annexed)* and now being in and upon the dwelling-house and premises of the said A. B. situate at —— *To have and to hold*, all and singular the said goods and chattels unto the said C. D. his executors administrators and assigns, for ever. *Provided always*, and it is hereby declared and agreed, that if the said A. B. his executors, administrators, or assigns, or any of them, do or shall well and truly pay, or cause to be paid unto the said C. D. his executors, administrators or assigns, the sum of —— of good and lawful money aforesaid, with interest at the rate of six pounds for every one hundred pounds for a year, on or before the —— day of —— now next ensuing, then these presents shall be void, and the said A. B. for himself, &c. *(here add a covenant for payment of the money similar to the form in p. 19)* and further that he the said A. B. his executors, administrators and assigns, all and singular said goods and chattels hereby bargained and sold unto the said C. D. his executors, &c. against him the said A. B. his executors, administrators and assigns, and all and every other person and persons whomsoever shall and will *warrant and for ever defend* by these presents. In witness, &c.

BOND.

Common Bond from one or more Obligors, to one or more Obligees, for Payment of Money at one period.

Know all men, by these presents, that I, *(we)* A. B. of —— in the district of —— yeoman, *(C. D. of —— and so on, if more obligors,)* am *(are)* held and firmly bound to E. F. of —— *(G. H. of —— and so on, if more obligees,)* in the sum of [*five hundred pounds*] of lawful money of Upper Canada, to be paid to the said E. F. [G. H. &c. if two obligees, add *or either of them*, but if three or more, say *or any or either of them*,] or his (their) certain attorney, executors, administrators, or assigns, for which payment to be well and truly made. I *(we)* bind myself, *(ourselves, and each of us by himself)* my *(our and each of our)* heirs, executors and administrators firmly by these presents. Sealed with my (*our*) seal (*seals.*) Dated the —— day of —— in the year of our Lord ——

The condition of this obligation is such, that if the above bounden A. B. (*and C. D. or either of them*) his (*their, or either of their*) heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid unto the above named E. F. [*G.H.*

&c. or any or either of them] his [*their or either of their*] executors, administrators, or assigns, the full sum of [*two hundred and fifty pounds*] of lawful money aforesaid, with lawful interest for the same, on or before the —— day of —— next ensuing the date of these presents; then this obligation shall be void, otherwise the same shall remain in full force.

Sealed and delivered, }
in the presence of —— }

For Payment of Money with Interest by Instalments.

Commencement as before.]

The condition of this obligation is such, that if the above bounden A. B. his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid unto the above named C. D. his executors, administrators, or assigns, the full sum of —— of lawful money aforesaid, with interest for the same, after the rate of six pounds for every one hundred pounds for a year, on the days and times and in manner following, [that is to say,] the sum of ——— part thereof, with interest for the same, after the rate aforesaid, on the —— day of —— next ensuing the date of this obligation, the sum of —— other part thereof, with interest for the same, after the rate aforesaid, on the —— day of ——— then next following, the sum of £—— residue thereof, with interest for the same after the rate aforesaid, on the —— day of —— then next ensuing, and which will be in the year of our Lord —— then this obligation shall be void. But if default shall be made in payment of any or either of the said several and respective sums of money, with the interest thereof respectively, in manner aforesaid, or any part of them, on any of the said days and times above mentioned for payment thereof, according to the true intent and meaning of these presents; then this obligation is to remain in full force and virtue.

N. B. The amount inserted in the bond is usually *double* the amount intended to be secured.

Bond for the Conveyance of Land upon Payment of the Purchase Money by Instalments.

Commencement as before.]

Whereas the said C. D. hath lately contracted and agreed with the said A. B. for the purchase in fee simple of Lot No. *one*, in the *third* concession of —— in the —— district, containing —— acres, more or less, free from all incumbrances, [except as hereinafter provided] at the price or sum of £—— to be paid within

five years from this date, by equal annual instalments of £10 each, on the —— day of —— in each year, with interest upon the whole amount, from time to time remaining due, at the rate of six pounds for every one hundred pounds for a year, such interest to be paid annually, on the said —— day of —— in each year, and the first instalment and interest to be paid on the —— day of —— now next ensuing. *The condition* of this obligation is such, that if the said C. D. his heirs, or assigns, shall and do well and truly pay, or cause to be paid upon demand, unto him the said A. B. his heirs, or assigns, the said sum of £50, by equal annual instalments, with interest thereon, at the rate, and at the days or times, and in manner aforesaid, without any defalcation or delay; *and also*, shall and do pay and satisfy all such rates, taxes, or assessments as shall from time to time hereafter grow due on account of the said premises, then if the said A. B. his heirs, or assigns, shall and do after full payment and satisfaction of the said sum of £50, and interest and taxes as aforesaid, upon the request of him the said C. D. his heirs, or assigns, execute a good and effectual conveyance, in the law of the fee simple and inheritance of the said land and premises unto him the said C. D. his heirs, or assigns, free from all other incumbrances, [except the provisoes and reservations contained in the original grant of the same premises from the crown,] and shall and do in the mean time, and until default shall happen to be made in payment of some one of the said instalments or interest, permit the said C.D. peaceably and quietly to have, hold, use, occupy, possess, enjoy, cultivate and improve, the said premises, free from all incumbrances, [except as aforesaid] without any hindrance, interruption or denial, of or by him the said A. B. his heirs, or assigns, this obligation shall be void, otherwise the same shall remain in full force.

Sealed, &c.

Form of Receipt to be Endorsed on the Bond.

Toronto, 1st May, 183 Received of the within named C. D. the sum of £10, in discharge of the first instalment, due this day, and £3 for interest.

A. B.

Another Form for the Payment of the Interest Annually, and the Principal in ten Years.

Whereas the said C. D. hath lately contracted, &c. for the purchase of, &c. at the price, &c. £100, to be paid on or before the —— day of —— which will be in the year of our Lord 183—,

together with interest thereon in the mean time, at the rate of six pounds for every one hundred pounds for a year, such interest to be paid half yearly, on the ——— day of ——— and the —— day of ——— in each and every year during the period aforesaid, and the first half yearly payment to be made on the ——— day of —— next ensuing the date of this obligation. *The condition* of this obligation is such, that if the said C. D. his heirs, or assigns, shall and do well and truly pay, or cause to be paid, unto him the said A. B. his heirs, or assigns, the said sum of £100, on or before the said ——— day of ——— 18— and also shall and do in the mean time, well and truly pay, or cause to be paid unto the said A. B. his heirs, or assigns, the interest thereon at the rate aforesaid, by equal half yearly payments, on the days or times, and in the manner aforesaid, and also shall and do pay and satisfy all such rates, taxes, &c.: then if the said A. B. his heirs, or assigns, shall and do after full payment, &c. [*as in the last form.*]

When the Interest is Payable in Advance.

Whereas, &c. [*as in the last form*] together with interest thereon in the mean time, at the rate of six pounds for every one hundred pounds for a year, such interest to be paid yearly in advance, on the ——— day of ——— in each year, during the period aforesaid, and the first years' interest, amounting to the sum of £—— being now paid down, as he the said A. B. doth hereby acknowledge. *The condition* of this obligation is such, that if the said C. D. his heirs, or assigns, shall and do well and truly pay, or cause to be paid unto him the said A. B. his heirs, or assigns, the said sum of —— on or before the —— day of —— and shall and do in the mean time, well and truly pay, or cause to be paid, unto him the said A. B. interest thereon at the rate aforesaid, yearly, and each years' interest always in advance, on the ——— day of ——— in each year, and also shall and do pay and satisfy all such taxes, &c.; then if the said A. B. his heirs, or assigns, shall and do, [*conclude as in former precedents.*]

To Pay Mortgage Money.

Commencement as before.]

The sum of ——— of lawful money, &c. next ensuing the day of the date of the above written obligation, together with interest on the same sum, at the rate of six pounds for every one hundred pounds for a year, without any deduction or abatement whatsoever, according to the purport and true intent and meaning of a

certain indenture of mortgage, bearing even date with these presents, and made between the said A. B. and S. his wife, of the one part, and the said C. D. of the other part. Then, &c. [*conclude as before.*]

From a Lessee and his Surety to Pay Rent according to Lease.

Whereas the above named M. P. by his indenture of lease, bearing even date with and executed before the above written obligation, for the consideration in the said lease mentioned, hath demised to the above bounden G. F. a certain saw mill, situate at, &c. *To hold* unto the said G. F. his executors, administrators and assigns, for the term of ——— years, from thence next ensuing, deteterminable nevertheless at the end of the first —— years of the said term, if the said G. F. his executors, administrators, or assigns, shall give ——— months notice thereof in manner therein mentioned, at and under the yearly rent of £—— payable quarterly, in manner as therein expressed, as by the said lease will more fully appear. *Now the condition* of the above written obligation is such, that if the above bounden G. F. and C. M. or either of them, their or either of their heirs, executors, or administrators, shall and do during the continuance of the said recited lease, well and truly pay, or cause to be paid, the said yearly rent or sum of ——— unto him the said M. P. his heirs, or assigns, by four equal quarterly payments, of £—— each, on the several days following, that is to say, the ——— day of —— the ——— day of ——— the ——— day of ——, and the —— day of —— in each and every year during the said demise, or within —— days next after every of the said days or times of payment, according to the true intent and meaning of the said recited lease, the first quarterly payment to be made on the —— day of —— next; then the above written obligation shall be void and of no effect, but if default shall happen to be made of or in any of the said quarterly payments, then the same shall remain in full force.

Assignment of a Bond by Endorsement.

Know all men, &c. that for and in consideration of the sum of —— of good and lawful money of Upper Canada, by G. H. of —— to the within mentioned obligee, E. F. in hand well and truly paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said E. F. *hath* bargained, sold, assigned, transferred and set over, and by these presents *doth* bargain sell, assign, transfer and set

over unto the said G. H. his executors, administrators and assigns, the within written bond or obligation, and all principal and interest money thereby secured, and now due, or henceforth to become due thereon, and all benefit and advantage whatever, to be had, made, or obtained by virtue thereof, and all the right, title, interest, property, claim and demand whatsoever, both at law and in equity, of him the said E. F. of, in, to, or out of the said bond and monies, together with the said bond. *To have, hold,* receive and enjoy the said bond and monies, unto the said G. H. his executors, administrators and assigns from henceforth, for his and their own use and benefit for ever; *and the said* E. F. doth hereby make, constitute and appoint, and in his place and stead put and place the said G. H. his executors, administrators and assigns the true and lawful attorney and attornies irrevocable of him the said E. F. in his name, but to and for the sole use and benefit of the said G. H. his executors, administrators and assigns, to ask, demand and receive of and from the within named A. B. the obligor in the within written bond or obligation named, his heirs, executors, administrators, or assigns, all such principal and interest monies as now are or shall from time to time, or at any time hereafter be due upon the said bond, and to sue and prosecute any action, suit, or execution thereupon, and to acknowledge, make and give full satisfaction, receipts, releases and discharges, for all monies secured by the said bond, and now due, or at any time hereafter growing due thereon, and generally to do all and every such further and other lawful acts and things, as well for the recovering and receiving as also for the relieving and discharging of all and singular the said hereby assigned bond, monies and premises, as fully and effectually to all intents and purposes, as he the said E. F. his executors, administrators, or assigns, could or might do if personally present, and doing the same. *And the said* E. F. doth hereby for himself, his executors and administrators, covenant with the said G. H. his executors, administrators and assigns, to ratify, allow and confirm all and whatsoever the said G. H. his executors, administrators, or assigns, shall lawfully do or cause to be done in or about the premises, by virtue of these presents. *And the said* E. F. for himself, his executors and administrators, doth further covenant, promise and agree to and with the said G. H. his executors, administrators and assigns, by these presents, in manner following, that is to say, that the within mentioned sum of £250 remains justly due and owing upon the said bond, and that he the said E. F. hath not received or discharged all or any of the said monies due, or to grow due on the said bond, nor shall or will release, nonsuit, vacate, or disavow any suit or other legal proceedings to be had, made, or

prosecuted by virtue of these presents, for the suing for, recovering, releasing, or discharging of the said monies, or any of them, without the licence of the said G. H. his executors, administrators, or assigns, first had and obtained in writing, nor shall or will revoke, invalidate, hinder, or make void these presents, or any authority or power hereby given, without such licence as aforesaid. *In witness, &c.*

Form of Feoffment after the Ancient Form.

This indenture made the ——— day of ——— in the year of our Lord ——— *between* A. B. of——— and S. B. his wife, of the one part, and C. D. of ——— of the other part; *witnesseth*, that the said A. B. for and in consideration of ——— of good and lawful money of Upper Canada, the receipt whereof is hereby acknowledged, *hath* given and granted, and by these presents doth give, grant, and confirm unto the said C. D. and his heirs, all, &c. *To have and to hold*, all and singular the same premises, with their appurtenances, to him the said C. D. his heirs and assigns, *to the only proper use and behoof* of the said C. D. his heirs and assigns for ever. *And the said* A. B. and his heirs, all and singular the said premises, with their and every of their rights, members and appurtenances unto him the said C. D. and his heirs, against him the said A. B. and his heirs, shall and will *warrant* and for ever defend by these presents. [*Add also the usual Bar of Dower.*] In witness, &c.

Livery Endorsed on this Deed.

Be it remembered, that on the day and year first within written, (this deed being first signed, sealed and delivered) full and peaceable possession and seisin of the within granted tenements and premises within mentioned, was given and delivered by the within named A. B. to the within named C. D. in their proper persons. *To have and to hold* to the said C. D. his heirs and assigns for ever, according to the form and effect of the within written deed, in the presence of us.

A. B.
C. D.
E. F.

Livery *indeed* is performed by the feoffor coming upon the land, and delivering to the feoffee a clod, branch, or turf, there growing, "in the name of seisin of all the lands and tenements in the deed." 2 *Bl. Com.* 315. *or* by the feoffor delivering the *charter* upon the land, in the name of livery of seisin of all the

lands comprised in the deed. 9 *Bl. Rep.* 138. *a.*; *or* by words only, without any act of delivery, as if the feoffor being upon the land, says to the feoffee, "Enter you into this land, and take seisin of it in the name of all the land contained in this deed. 6 *Rep.* 26. *b.*

Deed of Gift of Lands.

This indenture, made the ——— day ——— in the year of our Lord one thousand eight hundred and ——— *between* A. B. of the township of ——— in the ——— district, yeoman, of the one part, and C. D. (eldest son and heir apparent of the said A. B.) of the other part. *Witnesseth*, that the said A. B. as well for and in consideration of the natural love and affection which he hath and beareth unto the said C. D. as also for the better maintenance, support, livelihood and preferment of him the said C. D. *hath* given, granted, aliened, enfeoffed and confirmed, and by these presents *doth* give, grant, alien, enfeoff and confirm, unto the said C. D. his heirs and assigns, *all that* parcel or tract of land, &c. *(describing the premises,)* together with all and singular, houses, out-houses, edifices, buildings, barns, stables, courts, curtilages, gardens, orchards, woods, underwoods, ways, waters, water-courses, advantages and appurtenances, whatsoever, to the said parcel or tract of land and premises belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits of the same, and all the estate, right, title, interest, property, claim and demand whatsoever, of him the said A. B. of, in and to the said parcel or tract of land and premises, and of, in and to every part and parcel thereof, with their and every of their appurtenances, and all deeds, evidences and writings, concerning the said premises. *To have and to hold* the said parcel or tract of land, and all and singular other the premises hereby granted and confirmed unto and to the only proper use and behoof of the said C. D. his heirs and assigns for ever. In witness whereof the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

A Deed of Exchange.

This indenture, made the ——— day ——— in the year of our Lord ——— *between* A. B. of ——— yeoman, of the one part, and E. F. of ——— yeoman, of the other part. *Witnesseth* that the said A. B. *hath* given, granted and confirmed, and by these presents *doth* give, grant, and confirm unto the said E. F. *all that* parcel or tract of land, &c. [*describing the premises.*] *To have and*

to hold, the said parcel or tract of land and premises, with their appurtenances, to the said E. F. and his heirs for ever, *in exchange* for certain lands of the said E. F. hereinafter granted to the said A. B. and the said E. F. hath given, granted and confirmed, and by these presents doth give, grant and confirm unto the said A. B. *all that* parcel or tract of land, &c. [*describing the premises.*] *To have and to hold* the said last mentioned premises with their appurtenances, to the said A. B. and his heirs for ever, *in exchange* for the lands and premises hereinbefore granted by the said A. B. to the said E. F. and his heirs. *In witness, &c.*

Deed of Partition by Coheiresses.

This indenture, made the ——— day of ——— in the year of our Lord ——— *between* A. B. of ——— spinster, one of the two daughters and coheiresses of G. B. of ——— deceased, of the first part, and E.B. of———spinster, the other of the two daughters and coheiresses of the said G. B. of the second part, and C. D. of of ——— of the third part; *whereas*, the said A. B. and E. B. are desirous of making an equal partition of the lands and hereditaments which descended to them upon the decease of their said late father G. B. deceased, as his coheiresses at law, and they have accordingly agreed to divide the same, in the manner hereinafter mentioned; *now this indenture witnesseth*, that in consideration of the premises, and for making a perfect partition of all the said hereditaments and premises, and in condition of the sum of 5*s.* a piece to them, the said A. B. and E. B. in hand paid, by the said C. D. at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, they the said A. B. and E. B. *have*, and each of them *hath* granted, bargained, sold, released and confirmed, and by these presents *do*, and each of them *doth* grant, bargain, sell, release and confirm unto the said C. D. his heirs and assigns, all that, &c. [*here insert the whole of the premises,*] and all ways, waters, water courses, trees, woods, under-woods, commodities, advantages, hereditaments and appurtenances whatsoever, to the said several parcels or tracts of land, hereditaments and premises, or any of them, belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part thereof; and also all the estate, right, title, interest, trust, property, claim and demand whatsoever both at law and in equity, of them the said A. B. and E. B. of, in, to, or out of the said several parcels or tracts of land, hereditaments and premises, or any of them, or any part, or parcel thereof, *to have and to hold* the said several parcels or tracts of land, hereditaments and

premises, with their and every of their appurtenances, unto the said C. D. his heirs and assigns for ever, to and for the uses hereinafter mentioned and declared, of and concerning the same respectively, that is to say, [as to the said parcel or tract of land, being lot No. ——— in the ——— concession of the said township of ——— and hereinbefore more particularly described, with the appurtenances,] to the use and behoof of the said A. B. her heirs and assigns for ever, and [as to the said parcel or tract of land, being lot No. ——— in the ——— concession of the said township of ——— and hereinbefore more particularly described, with the appurtenances,] to the use and behoof of the said E. B. her heirs and assigns for ever; *and the said* A. B. for herself, her heirs, executors and administrators doth hereby covenant with the said E. B. her heirs and assigns, that she, the said A. B. hath not at any time heretofore done any act, whereby the said parcel or tract of land, hereditaments and premises, so limited to the use of her, the said E. B. her heirs and assigns as aforesaid, is, are, shall or, may be impeached or incumbered in title, charge, estate or otherwise howsoever. [Add a similar covenant for E. B. with A. B.] In witness, &c.

Under this form of conveyance, the estate which the trustee takes, is but momentary and under the *stat. of uses*, (27 *H.* 8. *c.* 10.) immediately vests in the "cestui que use," so that a pure freehold, or estate in fee simple will become vested in each of the parties A. B. and E. B. in their respective allotments.

Release by a Joint Tenant to a Trustee, to Sever the Tenancy.

This Indenture, made, &c. between S. A. of ——— of the one part, and C. A. of ——— of the other part; *whereas*, the said S. A. is and stands seised of and entitled unto certain messuages, farms, lands, tenements and hereditaments, situate, lying and being in the the township of ——— jointly with A. A. spinster, and D. the wife of T. S. of ——— which said A. A. and D. S. are sisters of the said S. A. *Now this indenture witnesseth*, that to the intent to sever the joint estate of the said S. A. in the premises, and that he may become sole seised of the same, or of such parts thereof, as he is now entitled to, and may be enabled to dispose thereof, by his last will or otherwise, and for and in consideration of 5*s.* of lawful and current money of the province of Upper Canada, by the said C.A. to the said S.A. in hand paid, at or before the sealing and delivering hereof, the receipt whereof, is hereby acknowledged, and for divers other good, causes and considerations, him thereunto moving. He, the said S. A. *hath* granted, released and confirmed, and by these presents *doth* grant, release and con-

firm unto the said C. A. and his heirs, all, all and every the messuages, cottages, farms, lands, tenements and hereditaments, situate, lying and being in the township of —— in the —— district aforesaid, which the said S. A. holds jointly with the said A. A. and D. S. or which jointly with the said A. A. and D. S. the said S. A. is in anywise seised of, or entitled unto, with their and every of their appurtenances, in whose occupation soever the same now are, or be, and for what estate soever they, the said S. A., A. A. and D. S. are so seised or entitled; and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of the same premises; and all the estate, right, title and interest, both at law and in equity, of him, the said S. A. into or out of the said granted premises, or any part thereof: *to have and to hold* the said messuages, farms, lands, hereditaments and premises aforesaid, to the said C. A. and his heirs; but to the only proper use and behoof of the said S. A. and his heirs and assigns for ever, and for no other use, intent or purpose whatsoever. In witness, &c.

Under this form of deed, a joint-tenant may convert his share of the estate into a tenancy in common, so as to be enabled to dispose of the same, by will or deed. But in order to effect a partition, it will be necessary to proceed either under the *stat.* 3 *W.* 4. *c.* 2. or he may proceed under the *stat.* in the first instance: although it may be desirable in some instances, arising from infirm health, or otherwise, to sever the joint estate by deed, to prevent the whole surviving to the other joint-tenants, by the death of one of the parties before a partition could be effected under the *stat.*— Joint-tenants may also release to each other.

Release from one Joint-Tenant to another.

This indenture, made, &c. between D. J. of —— widow of W. J. late of —— and sister of S. C. of —— of the one part, and the said S. C. of —— of the other part. *Whereas*, the said D. J. and S. C. are and stand jointly seised to them and their heirs, of and in *all those* messuages, &c. situate in the township of —— in the —— district, [*here insert an accurate description.*] *Now this indenture witnesseth*, that for and in consideration of the sum of —— by the said S. C. to the said D. J. in hand paid, at or before the sealing and delivery hereof, the receipt whereof, is hereby acknowledged. She the said D. J. *hath* granted, released and confirmed, and by these presents *doth* grant, release and confirm unto the said S. C. and his heirs, *all and singular*, the above mentioned messuages, farms, lands, tenements, hereditaments and premises herein before mentioned, to be the joint estate of them, the

said D. J. and S. C. with their and every of their appurtenances, and all ways, &c. and the reversion, &c. and all the estate, &c. *to have and to hold* the said messuages, farms, lands and premises, with their appurtenances, to the said S. C. and his heirs, *to the only proper use* and behoof of the said S. C. his heirs and assigns for ever. [Add covenants by D. J. that she is lawfully seised of one moiety of the premises, in joint-tenancy with the said S. C. —— hath good right to grant —— for quiet enjoyment —— free from incumbrances —— and for further assurance.] In witness, &c.

Release of Dower.

Know all persons, by these presents, that I, A. G. of, &c. —— for and in consideration of the sum of 5*s*. of good and lawful money of Upper Canada, to me in hand paid, by J. G. of —— at or before the sealing and delivery of these presents, the receipt whereof, is hereby acknowledged, *have* remised and released, and by these presents, *do* remise and release unto the said J. G. his heirs, executors and administrators, all dower and right, title, claim and demand of, or to dower, which I have, or may claim of, in, or to all, or any part of the freehold, lands and hereditaments, whereof H. G. my late husband, deceased, was at any time seised, possessed or interested in, *and also* all and all manner of action and actions, cause and causes of action, suits, bills, bonds, writings obligatory, debts, dues, accounts, sum and sums of money and demands, and every other cause, matter and thing whatsoever, which against the said J. G., I, the said A. G. ever had, or which I, or my heirs, executors or administrators, shall or may have, challenge or demand, for or by reason, or means of any cause, matter or thing from the beginning of the world to the day of the date of these presents. In witness, &c.

Lease of a House and Farm.

This indenture, made the —— day —— in the year of our Lord —— *between* A. B. of —— yeoman, of the one part, and C. D. of —— yeoman, of the other part. *Witnesseth*, that for and in consideration of the rents, covenants, conditions and agreements hereinafter reserved and contained, and which on the part and behalf of the said C. D. his executors, administrators and assigns, are or ought to be paid, done and performed, he the said A. B. *hath* demised, leased, set, and to farm let, and by these presents *doth* demise, lease, set and to farm let, unto the said C. D. his executors and administrators, *all that* parcel or tract of land, &c. *(describing the lot,)* together with the frame dwelling-house,

barns, stables, and other out-buildings thereupon erected, standing and being, together with all ways, paths, passages, waters, water-courses, privileges, advantages, and appurtenances whatsoever, to the same premises belonging, or in any wise appertaining. *To have and to hold* the said parcel or tract of land, dwelling-house, buildings and premises, hereby demised unto the said C. D. his executors, administrators and assigns, from the day of the date of these presents, for and during, and until the full end and term of ——— years from thence next ensuing, and fully to be complete and ended, *yielding and paying* therefore yearly, and every year during the said term hereby granted, unto the said A. B. his heirs and assigns, the yearly rent or sum of £——— of lawful current money of Upper Canada, (by two equal half yearly payments, to be made on the ——— day of ——— and the ——— day of ———) in each and every year during the said term, without any deduction or abatement thereout, for or upon any account or pretence whatsoever. *Provided always*, nevertheless, that if it shall happen that the said yearly rent hereby reserved, or any part thereof, shall be behind and unpaid for the space of *twenty-one* days next over or after either of the said days hereinbefore mentioned, and appointed for payment of the same, (being lawfully demanded) [*or* if the said C. D. his executors, or administrators, shall assign over, underlet, or otherwise depart with this indenture, or the premises hereby leased, or any part thereof, to any person or persons whatsoever, without the consent of the said A. B. his heirs, or assigns, first had and obtained in writing, under his or their hands, for that purpose; then, and in either of the said cases, it shall and may be lawful to and for the said A. B. his heirs, or assings, into the said premises hereby demised, or any part thereof, in the name of the whole, to *re-enter* and the same to have again, retain, repossess and enjoy, as in his and their first and former estate, or estates, any thing herein contained to the contrary thereof in anywise notwithstanding. *And the said* C.D. doth hereby for himself, his heirs, executors, administrators and assigns, covenant, promise and agree to and with the said A. B. his heirs and assigns, in manner following, (that is to say,) that he the said C. D. his executors, administrators and assigns, shall and will well and truly pay, or cause to be paid, unto the said A. B. his heirs and assigns, the said yearly rent of £——— by equal half yearly payments, on or at the days or times and in the manner hereinbefore mentioned and appointed for payment thereof. *And also* that he the said C. D. his executors, administrators and assigns, shall and will at his and their own costs and charges, well and sufficiently repair and keep repaired, the said dwelling-house, buildings, fences and gates now erected, or which shall at

any time or times hereafter during the said term be erected upon the said demised premises, he the said A. B. his heirs and assigns, upon request and notice to them made, finding and allowing on the said premises, or within ____ miles distance thereof, all rough timber, brick, lime, tiles, and all other materials whatsoever, (except straw) for doing thereof, to be carried to the said hereby demised premises, at the charge of the said C. D. his executors, administrators, or assigns, or otherwise permitting and allowing him or them, at their like costs and charges, to cut and fell such and so many timber trees upon some part of the premises hereby demised, as shall be requisite and necessary for the purpose, (damage happening by accidental fire, tempest, or other inevitable accident being always excepted,) *and further*, that he the said C. D. his executors, administrators and assigns, shall and will at all times during the said term, cultivate and farm such part or parts of the said lands and premises as now are or shall hereafter be brought into cultivation during the said term, in a proper husbandlike manner. *And* shall and will at the expiration or other sooner determination of this lease, peaceably and quietly leave, surrender and yield up unto the said A. B. his heirs and assigns, the whole of the said premises hereby demised, in such good and sufficient repair as aforesaid, (reasonable use and wear thereof and damage by accidental fire, tempest, or other inevitable accident as aforesaid, always excepted); *and also*, that it shall and may be lawful to and for the said A. B. his heirs and assigns, after *six days* previous notice in writing, *twice* or oftener in every year during the said term, at seasonable and convenient times in the day, to enter and come into and upon the said demised premises, or any part thereof, to view the condition of the same, and of all defects and wants of reparation and amendment which shall then and there be found, to leave notice in writing at the said demised premises to or for the said C. D. his executors, administrators, or assigns, to repair and amend the same within the space of *three* calendar months. *And the said* C. D. doth hereby for himself, his executors, administrators and assigns, covenant, promise and agree to and with the said A. B. his heirs and assigns, that he, the said C. D. his executors, administrators or assigns, shall and will, within three calendar months next after every and any such notice, shall have been so given or left as aforesaid, well and sufficiently repair and amend the same accordingly, (except as before excepted, and upon being provided or allowed materials for the same as aforesaid,) *and also* that he, the said C. D. his executors, administrators, or assigns, shall not, nor will at any time during the said term, pull down, or cause, or permit to be pulled down, or make, or cause, or permit to be made, any alteration by cutting

new door ways or otherwise, in the said dwelling-house, or in any of the buildings upon the said demised premises, without the consent in writing of the said A. B. his heirs, or assigns, for that purpose first had and obtained; *and moreover*, shall not, nor will at any time during the continuance of this demise, bargain, sell, assign, transfer, or set over this indenture of lease, or let, set, demise, underlease, or underlet the said dwelling-house and premises hereby demised, or any part thereof, or in any other manner part with this indenture of lease, or the possession or occupation of the premises hereby demised, without such licence and consent as aforesaid. *Provided always*, nevertheless, and these present are upon this express condition, that if the said yearly rent or sum of £—— hereby reserved, or any part thereof, shall be unpaid in part or in all by the space of *twenty-one* days next after either of the days on which the same ought to be paid as aforesaid, being lawfully demanded; *or* in case the said C. D. his executors, or administrators, shall at any time during the said term hereby granted, without such licence as aforesaid, assign, transfer, or set over, underlease, or underlet, the premises hereby demised, or any part thereof, or in any other manner part with the possession or occupation of the same, or any part thereof; *or* if all, or any of the covenants, conditions and agreements in these presents contained, on the part and behalf of the said C. D. his executors, administrators and assigns, shall be *not* performed, fulfilled and kept according to the true intent and meaning of these presents, then and from thenceforth, in any or either of the said cases, it shall and may be lawful to and for the said A. B. his heirs and assigns, into and upon the said demised premises, or any part thereof, in the name of the whole, wholly to *re-enter*, and the same to have again, retain, repossess and enjoy, as in his or their first and former estate, and thereout and from thence the said C. D. his executors, administrators and assigns, and all other occupiers of the said premises, to expel, put out, and amove, this indenture or any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. *And the said* A. B. doth hereby for himself, his heirs, executors, administrators and assigns, covenant, promise and agree, with and to the said C. D. his executors, administrators and assigns, that he, the said C. D. his executors, administrators and assigns, well and truly paying the said yearly rent hereby reserved, on the days and in the manner hereinbefore appointed for payment thereof, and observing, keeping and performing, all and singular the covenants and agreements in these presents contained, and which on his and their parts and behalves, are and ought to be paid, kept, done and

performed, shall and lawfully may, peaceably and quietly have, hold, use, occupy, possess and enjoy, the said demised premises and every part and parcel thereof, with the appurtenances, during all the said term of ——— years hereby granted, without any lawful let, suit, trouble, interruption, eviction, molestation, hindrance, or denial, of or by him the said A. B. his heirs or assigns, or of, from, or by any other person or persons claiming, or to claim, from, by, or under him them, or any or either of them.

In witness, &c.

Other Common Forms of Covenant.

(TRADES.)

And that he the said C. D. his executors, administrators and assigns, shall not, nor will during the said term hereby granted, permit or suffer any person or persons to use, exercise, or carry on, in and upon the said hereby demised premises, or any part thereof, *any trade* or business which may be nauseous or offensive, or grow to the annoyance, prejudice, or disturbance of any of the other tenements in the neighbourhood.

Another Form.

Nor shall nor will permit, or suffer any person or persons whomsoever to use, or follow, in or upon the said demised premises, or any part thereof, the trades or business of a tavern-keeper, victualler, retailer of spirituous liquors, butcher, currier, soap-boiler, common brewer, distiller, tallow chandler, tallow melter, sugar baker, working brazier, tinman, plumber, tripe boiler, or seller, dyer, smith, farrier, pipe maker, or burner, or any other nauseous or offensive trade or business whatsoever, without such licence and consent as aforesaid.

Not to Make Bricks or Tiles.

And moreover, that he the said C. D. his executors, administrators, or assigns, or any of them, shall not, nor will at any time or times during this demise, cause, permit, or suffer to be made, on any part of the said hereby demised premises, any *bricks or tiles* for sale, (any bricks or tiles thereon made for his or their own use, in building upon the said demised premises, or any part thereof, only excepted.)

Auctions.

And also that he the said C. D. his executors, administrators, or assigns, shall not, nor will at any time during this demise, per-

mit or suffer any auction or public sale of household goods, or other property, in or upon the said demised premises, without such licence as aforesaid.

A Proviso for either Lessee or Lessor to determine a Lease.

Provided always, and these presents are upon this express condition, nevertheless, that it shall and may be lawful, to and for either the said A. B. his heirs, or assigns, or the said C. D. his executors, administrators, or assigns, to determine and make void this lease at the expiration of the first *seven* or *fourteen* years of the said term of *twenty-one* years hereby granted, on causing notice or warning in writing, for that purpose, to be given to or left for the other of them, his or her heirs, executors, administrators, or assigns, at his, her, or their, then usual or last place of abode, six calendar months at least before the time limited for determining the same as aforesaid, any thing hereinbefore contained to the contrary thereof, in anywise notwithstanding.

Assignment of a Lease by Endorsement.

Know all men by these presents, that A. B. of ——— administrator of all and singular the goods and chattels, rights and credits of the within named C. D. deceased, for and in consideration of the sum of £——— of good, lawful and current money of Upper Canada, to him in hand well and truly paid, by E. F. of ——— at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, (hath) by and with the consent of the within named A. B. testified by his executing these presents,) bargained, sold, assigned, transferred and set over, and by these presents doth (by and with such consent as aforesaid,) bargain, sell, assign, transfer and set over unto the said E. F. his executors, administrators and assigns, all and singular the parcel or tract of land and premises, comprised in the within written indenture of lease, and all the estate, right, title and interest which he the said A. B. as administrator of the said C. D. as aforesaid, or otherwise, now hath, or at any time hereafter shall or may have, claim, challenge, or demand, of, in, or to, all or any of the said premises, by virtue of the said indenture of lease or otherwise, as the administrator of the said C. D. *To have and to hold* the said parcel or tract of land, and all and singular other the premises, with their and every of their appurtenances, unto the said E. F. his executors, administrators and assigns, for and during all the rest, residue and remainder yet to come and unexpired, of the within mentioned term of ——— years, subject, nevertheless, to the yearly rent of £ ——— in and

by the said indenture of lease reserved and contained, and to become due and payable, and to all and every the covenants, clauses, provisoes and agreements therein contained. *And the said* A. B. for himself, his heirs, executors and administrators, doth hereby covenant and declare to and with the said E. F. his executors, administrators and assigns, that he the said A. B. hath not at any time heretofore made, done, committed, or executed, or wittingly or willingly permitted, or suffered any act, deed, matter, or thing whatsoever, whereby or wherewith, or by means whereof, the said parcel or tract of land and premises hereby assigned, are, is, can, shall, or may be any ways impeached, charged, affected, or incumbered in title, charge, estate, or otherwise howsoever.

In witness, &c.

Arbitration Bond.

[*The commencement may be in the usual form of a common Bond.* See ante p. 27.]

The condition &c., that if the above bounden A. B. his executors and administrators, and every of them, do, and shall for his and their part and behalf in and by all things well and truly stand to, obey, abide, observe, perform, fulfil and keep, the award, order, arbitrament, final end and determination of &c. (or you may say any *two* of them, which will prevent the necessity of an umpirage) arbitrators indifferently chosen, elected and named, as well by and on the part and behalf of the said A. as by and on the part and behalf of the above named C., to arbitrate, award, order, judge, determine and agree, for, upon, touching and concerning, all manner of action and actions, cause and causes of action, suits, bills, bonds, specialties, covenants, contracts, promises, accounts, reckonings, sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages and demands whatsoever, both at law and in equity, at any time heretofore, had moved, brought, commenced, sued, prosecuted, done, suffered, or committed, by or between the said parties, so as the award of the said arbitrators, *(or any two of them)* be made and set down in writing, indented under their *(or any two of their)* hands and seals, ready to be delivered to the said parties in difference, on or before the —— day of ——, then this obligation to be void &c.

To be added, (before the words, then &c.) if there is to be an umpire.

And if the said arbitrators shall not make such their award of and concerning the premises, within the time limited as aforesaid, then if the said A. his heirs, executors and administrators, and

every of them, for his and their part and behalf, do, and shall well and truly stand to, observe, perform, fulfil and keep, the award, determination, and umpirage of G. (being a person indifferently named and chosen by the said parties, for umpire) in and concerning the premises, so as the said umpire do make and set down his award and umpirage in writing, indented under his hand and seal, ready to be delivered to the said parties in difference, on or before the —— day of —— then, &c.

To be added (after the words, *then, &c.)* when to be made a rule of court.

And it is hereby agreed by and between the said parties, that these presents and the submission hereby made of the said matters in controversy, shall be made a rule of his Majesty's court of King's bench, to the end the said parties in difference, shall be finally concluded by the said arbitration, by these presents intended, pursuant to the statute in that case made and provided.

But if the condition be special, say—Whereas, differences have arisen, and are depending between the above bounden A. B. and the above named C. D. concerning (*here particularly mention what the difference is about*) which account, and all differences and demands concerning the same, the said parties have agreed to refer to the award, judgment and determination of —— arbitrators, indifferently chosen by and between the said parties, to award, arbitrate and determine, concerning the same, (*and if to be an umpire, say,*) *and* if they do not make their award within the time hereunder limited thereto, then to the umpirage of such person as the said arbitrators shall indifferently choose for umpire, as hereinafter is mentioned; *now therefore*, the condition of this obligation is such, that if the said A. B. his executors and administrators, on his and their part and behalf, shall and do, in and by all things, well and truly stand to, observe, perform, fulfil and keep the award, arbitration, judgment, final end and determination, which —— arbitrators as aforesaid, shall make and give in writing, &c. (*as before, to the time fixed on, and then say*) in and concerning the before mentioned account and matters in difference, and all, or any actions, suits and causes of suits, debts, dues, damages, claims and demands whatsoever, concerning the same; *and* if the said arbitrators shall not, &c. (*as before*) then, &c.

For the form of an "award," by an arbitrator, see ante. p. 33. J. P.

Award by an Umpire.

To all to whom these presents shall come T. U. of —— yeoman, sends greeting:—*Whereas*, P. Q. of —— of the one part,

and A. B. and C. D. of —— of the other part, have mutually entered into, and reciprocally executed bonds or obligations to each other, bearing date, the —— day of —— respectively, conditioned, that the said parties should in all things well and truly stand to, abide, observe, perform, fulfil and keep the award, final end and determination of R. S. of —— and B. W. of ——— arbitrators, indifferently chosen by the said parties, of and concerning all and all manner of action and actions, cause and causes of action, suits, bills, bonds, &c. (*reciting the condition of the bond*); *and whereas*, the said R. S. and B. W. met upon the said arbitration, and did not make their award between the said parties by the time limited in and by the conditions of the said bonds, and in pursuance of the said bonds have chosen and appointed me as umpire, to settle and determine the matters in difference; *now know ye*, that I, the said J. P. the umpire, named and chosen as aforesaid, having taken upon me the burthen of the said arbitration, and having heard and examined the said parties, and their respective witnesses, proofs and allegations on both sides of and concerning the said disputes and differences between them, and fully considered the same, and the matters to me referred, *do* make this my award and umpireage, in manner following, that is to say, [I do award and order, that the said P. Q. his executors or administrators, do and shall, on the —— day of —— between the hours of —— and —— in the forenoon, at the house, known, &c.] pay, or cause to be paid unto the said A. B. and C. D. the sum of —— in full, for their damages and costs in a certain action, lately commenced by them, against the said P. Q. and also, for the costs of and occasioned by the said reference; and upon payment of the said sum of £—— I do award and direct, that the said parties shall duly execute and deliver to each other, mutual releases in writing, of all and every action and actions, cause and causes of action, damages, claims and demands whatsoever, subsisting or depending, on or before the said —— day of —— last. In witness, &c.

Sealed and delivered in the
presence of

General power of Attorney to receive Debts, liquidate Accounts, submit to Arbitration, Compound, &c.

Know all men by these presents, that I, M. P. of —— widow, for divers good causes and considerations me hereunto especially moving, *have* made, ordained, authorised, constituted and appointed, and by these presents *do* make, ordain, authorise, constitute and appoint A. R. of —— my true and lawful attorney, for me

and in my name, and to and for my sole use and benefit, to bring to account and reckoning, and to ask, demand, sue for, levy, recover and receive, of and from all or any person or persons whomsoever and wheresoever, all sum and sums of money whatsoever, which they or any of them shall or may be in anyways indebted unto me, on any account whatsoever, and on receipt thereof, or any parts or part thereof for me, in my name and to my use, such good and sufficient receipts, releases and discharges, to make and give for the same, as the nature of the case shall require; and to liquidate, adjust, compound, arbitrate, release and discharge the same, and on neglect or refusal from or by any such person or persons, to pay all or any such sum or sums of money so due and owing unto me as aforesaid, to take and use all such usual and customary legal ways and means for compelling or securing the due payment thereof, by action, suit, attachment or otherwise, howsoever, in my name, as my said attorney shall be advised; and for me and in my name and for my use, to prosecute and defend all or any actions or suits, either at law or in equity, attachment or other legal process, now brought or to be brought and commenced by, for or against me, in any court or courts of judicature in Upper Canada, and therein to proceed to judgment and execution thereon, or to discontinue or compromise the same, as my said attorney shall be advised, and to enter up satisfaction on record in any or either of the said courts, or to do any other act, matter or thing, which shall be required and necessary to be done on my part and behalf in the proceedings, or carrying on, or defending any such action or suit so brought or to be brought as aforesaid; and also for me and to and for my use to defray, pay and discharge, all sum and sums of money, debts, dues, claims and demands, which shall or may be justly due and owing from, or accrue against me, to any person or persons whomsoever, on any account whatsoever, and to take and receive for the same such receipts, acquittances and discharges, as the case may require; and also for me in my name, and to and for my use and benefit, to do, transact, execute and perform, all and whatsoever other acts, deeds, bonds of arbitration, deeds of composition, releases, assignments, matters and things, which shall or may arise and be requisite and necessary to be done in and about, touching or concerning the management of my affairs and concerns, or any of them, or in any manner relative thereto; and generally for me in my name and to my use to do, perform and execute, all and whatsoever other acts, matters and things, which my said attorney shall judge requisite and necessary to be done in and about the premises, as fully and effectually to all intents and purposes as if I myself were present and did the same, I the said M. P. hereby rati-

fying, allowing, and covenanting, promising and agreeing, for myself, my heirs, executors and administrators, from time to time, and at all times hereafter, to ratify, allow and confirm, as good and valid, all and whatsoever my said attorney shall lawfully do or cause to be done in and about the premises, by virtue hereof.

In witness &c.

Sealed and delivered in the presence of A. B. M. P. *(Seal.)*

Revocation of a Power of Attorney.

Know all men by these presents, that I, M. P. of —— for divers good causes and considerations, me hereunto especially moving, *have* revoked, countermanded, annulled and made void, and by these presents *do* revoke, countermand, annul and make void, a certain deed poll or power of attorney, under my hand and seal, bearing date the ——, to C. D. of ——, given, delivered and executed, and all powers and authorities whatsoever therein expressed and declared. In witness &c.

Sealed and delivered in the presence of A. B. M. P. *Seal.*

Or where the Date of the Power of Attorney is uncertain.

Commencement as above] all and every powers and power of attorney which at any time heretofore I have given and executed under my hand and seal to —— and all powers and authorities therein expressed, or in any of them, &c.

A General Power of Attorney to Manage and Sell Estates.

Know all men by these presents, that I, A. B. of —— for divers good causes and considerations me hereunto especially moving, *have* made, constituted and appointed, and by these presents *do* make, constitute and appoint C. D. of —— my true and lawful attorney, for me and in my name to enter into and upon, and to take possession of all and singular my messuages, farms, lands, tenements and hereditaments whatsoever, and wheresoever situate in the province of Upper Canada; *and also*, for me and in my name to make sale of and convey all or any of the said premises, and to sign receipts for the purchase monies, and to sign, seal and execute, and as my act and deed, acts and deeds, deliver good, sufficient and valid deeds or deed of conveyance and assurance, for conveying the said premises, or any part thereof, to any purchaser or purchasers of the same, his, her or their heirs and assigns; *and also*, for me and in my name to contract

with any person or persons for leasing any of the said premises, and to make, seal, deliver and execute, any lease or leases, demise or grants, for any term or terms of years not exceeding —— years, in possession, and not in reversion, and at such rent or rents as my said attorney shall think proper; *and also*, for me and in my name to ask, receive and recover, of all tenants and occupiers whatsoever of all and every the said premises, all rents and arrears of rent, issues and profits, due and owing, or which at any time or times hereafter shall grow and become due and owing on account of the same premises, and if need be, to distrain for, sue or prosecute for the same; *and also*, for me and in my name to commence and prosecute any action or actions, suit or suits, as well real as personal and mixed, or otherwise, in any court of law or equity in the said province, in relation to the said premises, and the same to prosecute and follow, or to discontinue or become nonsuit therein, as my said attorney shall see cause; *and generally*, for me and in my name to do, perform and execute, all and whatsoever shall be requisite and necessary to be done in and about the premises, as fully and effectually, to all intents and purposes, as I might or could do if personally present, hereby promising to ratify and confirm all and whatsoever my said attorney shall lawfully do or cause to be done by virtue of these presents; *and lastly*, I do hereby revoke and make void all former powers of attorney, authorities and deputations, by me at any time heretofore made, given or executed, in any of the matters or things above mentioned, to any other person or persons whomsoever.

In witness, &c.

Bond for the Transfer and Conveyance of an U. E. Right.

Know all men by these presents, that I ——— of the township of ——— in the ——— district and province of Upper Canada, ——— am held and firmly bound unto ——— of the ——— of ——— in the ——— district and province aforesaid, —— in the sum of ——— pounds, of the lawful money of the said province, to be paid to the said —— his certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, I bind myself, my heirs, executors and administrators firmly by these presents; sealed with my seal, and dated this —— day —— in the year of our Lord one thousand eight hundred and thirty —— Whereas the above bounden —— hath, for and in consideration of the sum of —— to —— in hand paid, agreed to transfer and make over, convey and assure, unto the said —— his heirs and assigns for ever, *two hundred acres of land*, to which —— is entitled as the —— of an U. E. loyalist, when and so soon as the patent for the same shall be

obtained from the crown, at the proper costs and charges of the said ——— his heirs or assigns. Now the condition of the above obligation is such, that if the said —— or —— heirs do and shall in all things, well and truly observe, fulfil and keep the said agreement so made and entered into with the said ——— then this obligation shall be null and void: else to be and remain in full force and virtue.

Signed, sealed, and delivered in presence of }

Power of Attorney to Locate the Land.

Know all men by these presents, that I ——— of the township of ——— in the ——— district, do hereby nominate, constitute and appoint ——— of the ——— of ——— in the ——— district, my true and lawful attorney for me, and in my name, to locate two hundred acres of land, which I am entitled to receive from the crown as the ——— of ——— an U. E. loyalist. Witness my hand and seal at ——— this ——— day of ——— in the year of our Lord one thousand eight hundred and thirty ———

In the presence of ———

Power of Attorney to Execute a Conveyance thereof.

Know all men by these presents, that I ——— of the township of ——— in the ——— district, and province of Upper Canada ——— have made, nominated, constituted and appointed, and by these presents do make, nominate, constitute and appoint ——— of the ——— of ——— in the ——— district of the said province ——— my true and lawful attorney irrevocable for me, and in my name, and as my act and deed, as soon as the patent for two hundred acres of land, which I am entitled to receive from the crown as the ——— of ——— an U. E. loyalist, shall be procured from the registrar of the province, or such officer as may be appointed to deliver the same, to sign, seal, execute and deliver a good, sufficient and valid transfer deed or conveyance, with such clauses, conditions, covenants and agreements to be therein contained, as my said attorney may think fit and expedient, for conveying and assuring the said two hundred acres of land unto ——— of the ——— of ——— in the ——— district, or his heirs, or to such person or persons as may become the assignee or assignees of a certain bond bearing even date with these presents, whereby I am bound under a penalty of ——— pounds, to convey the said land unto the said ——— his heirs or assigns; hereby authorizing and allowing my said attorney, one or more attorney or attornies under him, to appoint for the purposes above mentioned, and

again at his pleasure to revoke; and giving by these presents full power and authority to my said attorney, or any of his substitutes by him appointed as aforesaid, to act in and about the premises as fully and effectually as I might or could do if personally present, and ratifying and confirming all and whatsoever he or they, or either of them, shall and may lawfully do, or cause to be done therein by virtue of these presents. In witness whereof, I have hereunto set my hand and seal at —— this —— day of —— in the year of our Lord one thousand eight hundred and thirty —— In the presence of.——

Power of Attorney to take up the Patent Deed.

Know all men by these presents, that I —— of the township of —— in the —— district, —— do hereby nominate, constitute and appoint —— of the —— of —— in the —— district, —— my true and lawful attorney for me, and in my name, to ask, demand and receive from the registrar of this province, or such officer as may be appointed to deliver the same, a patent deed for two hundred acres of land, which I am, or may become entitled to receive from the crown as the —— of —— an U. E. loyalist, as soon as the said said deed shall be completed, and to give receipts for the same if required. Witness my hand and seal at —— this —— day of —— in the year of our Lord one thousand eight hundred and thirty ——

In the presence of ——

Assignment for the benefit of Creditors.

This indenture, made the —— day of —— &c. between J. S., R. W. and R. G. of, &c. of the first part, J. L. of, &c. B. D. of, &c. and J. W. of, &c. creditors of the said J. S., R. W. and R. G. of the second part, and the several persons whose names and seals are hereunto subscribed, being bona fide creditors of the said J. S., R. W. and R. G. of the third part. *Whereas*, the said J. S., R. W. and R. G. have for several years past, carried on the joint trade of —— in partnership together, and by reason of certain losses and misfortunes, they are unable to pay and satisfy to every of their joint and separate creditors, the whole of their respective demands, but in order to render to them the utmost satisfaction in their power, they have proposed to convey and assign, as well all their joint property, as also their separate estate and effects, real and personal, to any two or more of their creditors, in trust for themselves and the rest of their said creditors rateably, in proportion to the amount of their several debts, reserving for themselves any surplus of their said respective estates, according to their several rights and interests therein, upon condition of

their being jointly and severally released and discharged from their joint and several debts in manner hereinafter provided, to which the said respective parties of the second and third parts, have consented and agreed, and have chosen and appointed the said J. L., B. D. and S. W. to be trustees for the same accordingly. *And whereas*, the said J. S. being seised and possessed of, or otherwise entitled to his separate use of and in certain lands, &c. hath proposed to convey, and hath, by indenture bearing even date herewith, granted and conveyed the same premises to the said J. L., B. D. and S. W. their heirs and assigns forever, for the purpose of sale, and then for the same uses and purposes as are hereinafter expressed and declared. *And whereas*, the said R. W. is distinctly possessed of sundry household furniture, plate and effects, together with a lease of his dwelling house in, &c. all which he hath also agreed to bring in and assign for the trusts hereinafter declared. *And whereas*, by indenture of lease, bearing date, the —— day of —— and made between T. B. and J. C. of the one part, and the said J. S., R. W. and R. G. of the other part, the said T. B. and J. C. did demise to the said J. S., R. W. and R. G. jointly, *all those*, *&c.* to hold the same, to them, the said J. S., R. W. and R. G. their executors, administrators and assigns, from —— for the term of —— thence following, subject to the yearly rent of £—— payable quarterly, as thereby appears. *Now this indenture witnesseth*, that for and towards payment and satisfaction of all the aforesaid debts and demands jointly and severally due to the said respective creditors, parties hereto of the second and third parts, and for and in consideration of *5s.* of lawful money of Upper Canada, to each of them, the said J. S., R. W. and R. G. in hand well and truly paid, by the said J. L., B. D. and S. W. at or before the sealing and delivering of these presents, the receipt whereof is hereby respectively acknowledged, they, the said J. S., R. W. and R. G. in fulfilment of their part of the said recited agreement, *have*, and each and every of them *hath*, bargained, sold, assigned, transferred and set over, and by these presents *do*, and each and every of them *doth*, bargain, sell, assign, transfer and set over unto the said J. L., B. D. and S. W. *all and singular*, the said several lease-hold messuages or tenements, ware-houses and premises, in the said recited indentures of lease mentioned, to be demised with the appurtenances, together also, with the said respective indentures of lease, and also, all and singular, the debt and debts, sum and sums of money, house-hold and other goods, furniture, chattels, wares and merchandizes, bonds, bills, notes, securities and vouchers, for or affecting the payment of money, plate, jewels and all other the joint and several estates and effects of them, the said J. S., R. W.

and R. G. of what nature or kind soever, and wheresoever situate and being, and in whosesoever hands, custody or power, the same or any of them, or any part thereof, may now, or hereafter at any time may come, or be with their and every of their appurtenances, and all the right, estate and interest, property, claim and demand whatsoever therein or thereto, of them, the said J. S., R. W. and R. G. as well jointly as partners in trade, or as separately and distinctly in their own separate and distinct capacities, (the wearing apparel of themselves and families excepted); *To have and to hold*, all and singular, the said respective premises hereinbefore assigned, and every part thereof, respectively, to them, the said J. L., B. D. and S. W. their executors, administrators and assigns *upon trust*, nevertheless, that they, the said J. L., B. D. and S. W. or the major part of them, and the survivors or survivor of them, his executors, administrators and assigns, do and shall, with all convenient speed, sell and dispose of all and singular, the respective, joint and separate estates and effects hereinbefore assigned, for the most money that can be procured for the same, and use their utmost endeavours, by all lawful ways and means, to obtain, recover and receive the same respectively, into their hands and possession, and forthwith convert the same into money, upon and for the most advantageous terms; and from and after deducting and retaining to themselves, the said J. L., B. D. and S. W. and the survivors and survivor of them, his executors, administrators and assigns, all such reasonable costs and charges, damages and demands, as they shall sustain or incur, as well in the execution of the trusts hereby in them reposed, as also, in respect to these presents, upon trust, from time to time to pay, distribute and divide the whole of the remainder of such monies, estate and effects, to and amongst themselves, the said J. L., B. D. and S. W. and all the other bona fide creditors, parties hereto of the third part, their respective executors, administrators, agents or assigns, rateably and in proportion to the several amounts of their respective debts, to be verified on oath, if required by them; and in case it shall happen, that there shall remain any surplus of the said joint estate or separate estates hereinbefore mentioned, after all such payments of costs and distribution as aforesaid, then upon trust, to pay and divide the same to and among the said J. S., R. W. and R. G. their executors, administrators and assigns, respectively, in proportion, and according to their joint and several rights and interests therein and thereto. *And* for the better and more easy getting in, recovering and receiving of all and every the said joint and several estates and effects now due, owing or belonging to the said J. S., R. W. and R. G. or either or any of them, they the said J. S., R. W. and

R. G. *have*, and each and every of them *hath* named, authorised, constituted, empowered and appointed, and by these presents *do*, and each and every of them *doth* freely and absolutely name, authorise, constitute and appoint, the said J. L., B. D. and S. W. and the major part of them, and the survivors or survivor of them, his executors and administrators, their true and lawful attornies and attorney, jointly and severally, irrevocably in their own names or name, or in the names or name of them the said J. S., R. W. and R. G. jointly or severally, as the case may require, or any otherwise howsoever, but to and for the use and benefit of all their said respective creditors, in manner, and upon the trust and proviso hereinbefore declared, to ask, demand, sue for, recover and receive, of and from all and every person and persons who are, or shall, or may stand indebted to them, or have, hold and retain, any property, estate or effects, belonging to them or either of them, all such sum and sums of money, estate and effects whatsoever, and upon receipt thereof, or of any part thereof, such receipts and acquittals for the same to sign and deliver, as the nature of the case may require; and on non-payment or non-delivery thereof, such actions, suits, attachments, or other legal or equitable process, to commence and prosecute for the recovery thereof, as shall be most advisable, and to compound for the same as shall be found to be most advantageous, and for the same purposes aforesaid to substitute one or more attorney or attornies under them, and the same at pleasure to revoke and others to appoint, they the said J. S., R. W. and R. G. hereby granting their full power, authority, name and names, jointly and severally in the premises, to all intents and purposes, as they, or any or either of them might or could have done therein in case these presents had not been made; *and the said* J. S., R. W. and R. G. do hereby, jointly and severally, covenant, promise and agree, with and to the said J. L., B. D. and J. W. their executors administrators and assigns, in manner following, that is to say,—that neither of them the said J. S., R. W. and R. G. hath at any time heretofore made, done, committed or suffered, nor shall or will at any time or times hereafter during the execution of all or any of the trusts hereby created, or any person or persons by their order, or for their use, make, do, commit, or suffer to be done, any act whatsoever, whereby to relieve or discharge any debt or debts, to alienate or conceal any sum or sums of money, estate or effects, hereinbefore assigned or intended so to be, or to revoke the power and authority hereinbefore given, or to obstruct or hinder the due recovery and receiving the said respective estate and effects hereinbefore assigned, or to relieve or discontinue any process which shall or may be commenced for

recovery thereof, or to prevent any defence concerning the same, but on the contrary, shall and will at all times permit and suffer, promote and forward, the due and regular receipt and recovery thereof, and ratify, allow and confirm, all such acts as shall be lawfully done therein by virtue of these presents; *and also*, shall and will assist in making up their respective accounts, and elucidating the same, and do perform and execute all such further and other acts, deeds, matters and things, as shall be requisite and necessary in and towards the carrying on and accomplishing the trust hereby created; *and the said* J. L., B. D. and S. W. do hereby, for themselves, their executors and administrators respectively, covenant, promise and agree, to and with the said J. S., R. W. and R. G. and to and with all and every their said creditors parties hereto, of the third part, their executors and administrators, severally and respectively, in manner following, (that is to say)—that they the said J. L., B. D. and S. W. and the survivors and survivor of them, and the executors and administrators of such survivor, shall and will from time to time, when and as often as any monies, estates or effects, shall come to their hands by virtue of these presents, after deducting and retaining all such costs and charges, damages and demands, as aforesaid, well and truly share, divide and pay the same to and among themselves and all the rest of the said creditors parties hereto, of the third part, in rateable proportion, according to the amount of their several and respective debts, and the surplus of the said respective joint and separate estates, according to such shares and interests agreeably to the trusts and to the proviso hereinbefore declared limited and expressed, concerning the same respectively, and for no other use or purpose whatsoever; and also, that all monies collected and received by them for or on account of the said joint or separate estate or estates, shall be paid in the joint names of them the said J. L., B. D. and S. W. to the Bank of Upper Canada: *Provided always*, and it is hereby declared and agreed, that neither of them the said J. L., B. D. and S. W. their executors or administrators, shall be liable or accountable for more money and effects than they shall respectively receive, nor for any loss or damage thereto, except the same arise by their own wilful neglect or procurement. *And this indenture further witnesseth*, that they the said respective creditors parties hereto of the second and third parts, in performance of their part of the aforesaid agreement, and in consideration of the assignment, proviso and covenant hereinbefore made and entered into by and on the part of the said J. L. R. W. R. G. and of the trust hereby created, and for other good and valuable considerations them hereunto respectively moving, *do*, and each and every of them for himself

and herself and themselves severally and respectively, and for their several and respective executors, administrators and assigns, *doth* hereby accept and take the said hereinbefore assigned joint and several premises, estates and effects, in full payment, satisfaction and discharge of all their respective debts and demands; *and* they the said several creditors executing these presents, in further pursuance and full performance of their recited agreement, and for the several considerations aforesaid, *have*, and each and every of them *hath*, and by these presents, for themselves severally and respectively, and for their several and respective executors and administrators, *do*, and each and every of them *doth* freely, clearly and absolutely, remise, release, exonerate, discharge, and for ever quit claim unto the said J. S., R. W. and R. G. jointly and severally, and their joint and several heirs, executors and administrators, and their respective future lands, tenements, goods and chattels; *as well* their, and each and every of their respective debts; *as also* all and all manner of action and actions, suit and suits, cause and causes of action and suit, both at law and in equity, which they the said creditors executing these presents, any or either of them, their or any or either of their executors, administrators or assigns, now have, ever had, or at any times hereafter can, shall or may have, claim, challenge or demand, against them the said J. S., R. W. and R. G., either jointly or severally, their, or either or any of their heirs, executors or administrators, for or by reason or on account of any other matter, claim, demand, cause or thing whatsoever, antecedent to the day of the date of these presents: *Provided always*, and these presents, and the release hereinbefore mentioned, are and is upon this express condition—that in case any of the said creditors parties hereto, shall at any time within the space of [three years] now next ensuing, make it appear, and fully and plainly prove that they the said J. S., R. W. and R. G. or any or either of them have or hath secreted and concealed any part of their respective joint or separate estates or effects hereinbefore assigned or intended so to be in trust as aforesaid, to the amount or value of [twenty shillings] then the general release hereinbefore given shall be void and of no effect to all intents and purposes whatsoever, in relation to such of the parties as shall be guilty of such concealment, and then and from thenceforth immediately, every creditor party hereto shall be entitled to the whole of his or their said respective debt, or to so much thereof as shall remain unpaid and unsatisfied, with lawful interest for the same from the day of the date of these presents, as against such party or parties, and shall and may have full power and authority to commence such process for recovery thereof against him or them, his or their

respective executors and administrators, as if these presents had not been made. In witness, &c.

Release from Creditors to a Debtor under Composition.

To all to whom these presents shall come. We who have hereunto set our hands and seals, creditors of A. B. late of —— send greeting. Whereas the said A. B. is indebted to us his said creditors, in several sums of money which he is not able fully to satisfy and discharge, we therefore have agreed, and do hereby agree, to accept of a composition at the rate of ——— shillings in the pound upon the amount of our respective debts, in full payment and satisfaction of the same respectively. *Now, therefore, know ye*, that for and in consideration of the several sums of money set opposite to our names, being the amount of such composition upon our said debts, to us and each and every of us, in hand well and truly paid by the said A. B. at or before the sealing and delivery hereof, the receipt whereof is hereby respectively acknowledged, each of us the said creditors, who have hereunto set our hands and seals for himself and herself, his and he heirs, executors, administrators and copartners, doth by these presents remise, release, and for ever discharge the said A. B. his heirs, executors and administrators, of and from our said several debts, and all manner of action and actions, suits, debts, dues, sum and sums of money, accounts, reckonings, bills, judgments, claims and demands whatsoever, both at law and in equity, which against the said A. B. each and every of us the said creditors and our copartners now have or hath, or which each and every of us, our heirs, executors, or administrators hereafter can, shall, or may have, claim, or demand for, upon, or by reason of the said several and respective debts to us severally due and owing, or for or by reason of any other matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents. In witness, &c.

A General Release of Claims.

Know all men by these presents, that I, A. B. of —— for and in consideration of the sum of —— of lawful money of Upper Canada, to me in hand well and truly paid by B. C. of &c. *have* remised, released, and for ever discharged, and by these presents *do*, for myself, my heirs, executors and administrators, remise, release, and for ever discharge the said B. C. his heirs, executors and administrators, of and from *all* and all manner of action and

actions, cause and causes of action, suits, debts, dues, sums and sum of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, judgments, extents, executions, claims and demands whatsoever, in law and equity, which against the said B. C. I ever had, now have, or which I, my heirs, executors or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents. In witness, &c.

Release to a Guardian.

Know all men, by these presents, that A. B. of ——— (son and heir of ——— deceased,) in consideration of five shillings of lawful money of Upper Canada, to him paid by C. D. of ——— his guardian, *hath* remised, released and for ever quitted claim, and by these presents *doth* remise, release and for ever quit claim unto the said C. D. all, and all manner of action and actions, suits, reckonings, accounts, debts, dues and demands whatsoever, which he, the said A. B. ever had, now hath, or which he, his executors or administrators, at any time hereafter can, or may have claim or demand against the said C. D. his executors or administrators for, touching and concerning the management and disposition of any of the lands, tenements and hereditaments, real and personal estate, of the said A. B. situate, &c. or any part thereof, or for, or by reason of any monies, rents or profits, by him received, out of the same, or any payments made thereout, during the minority of the said A. B. or by reason of any matter, cause or thing whatsoever, relating thereto, from the beginning of the world to the day of the date hereof. In witness, &c.

Release to an Executor.

To all to whom these presents shall come, A. B. and C. D. of ——— residuary legatees, named in the last will and testament of ——— L. P. late of ——— yeoman, deceased, bearing date, the ——— day of ——— and duly proved by the executor thereof, R. S. in the court of probate, on the ——— day of ——— send greeting:—*Whereas*, the said R. S. as such executor, hath duly accounted with them, the said A. B. and C. D. for all transactions, receipts and payments by him, for and on account of the estate of the said L. P. deceased, and hath duly paid over and satisfied to them, the said A. B. and C. D. the full residue thereof, in equal shares, that is to say, the sum of £——— unto him, the said A. B. and the sum of £——— unto him, the said C. D. the receipt whereof, they do hereby respectively acknowledge. *Now these*

presents witness, that for and in consideration of the premises and of the further sum of 5*s*. of good and lawful money of Upper Canada, to each of them, the said A. B. and C. D. paid by the said R. S. at or before the execution hereof, the receipt whereof, is hereby acknowledged; they, the said A. B. and C. D. *have* and each of them hath remised, released and for ever quitted claim, and by these presents *do*, and each of them doth remise, release, exonerate and for ever quit claim unto the said R. S. his executors and administrators, and all the estate and effects, rights and credits which were of the said testator, L. P. deceased, *all*, and all manner of action and actions, suit and suits, cause and causes of actions, reckonings, claims and demands whatsoever, which against him, the said R. S. his executors, administrators or assigns, or any of them, or the estate and effects of the said L. P. deceased, they the said A. B. and C. D. or either of them, severally and respectively, ever had, now have, or hath, or which they, their respective executors or administrators, can, shall or may at any time or times hereafter have claim, set up, challenge or demand in any manner howsoever, for or on account of the said recited will, or the residuary bequest therein contained and expressed, antecedent to the day of the date of these presents; *and* for the considerations aforesaid, he, the said A. B. doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said R. S. his executors, administrators and assigns, in manner following, (that is to say,) that he, the said A. B. his heirs, executors and administrators, shall and will, from time to time, and at all times hereafter, as far as his right, share and interest in the said residuary bequest extends, and no further, well and sufficiently save harmless, and keep indemnified him, the said R. S. his executors, administrators and assigns, and the executors and administrators of the said L. P. deceased, and the estate and effects of the said testator, from and against the payment of all, or any debt or debts, sum or sums of money, judgments, costs, damages, claims and demands whatsoever, affecting the said residuary bequest, which can or may be henceforth set up, substantiated and incurred, subsequent to and unforeseen at the day of the date of these presents.—*(Add a similar covenant from C. D.)* In witness, &c.

Release to an Administrator.

To all to whom these presents shall come.—A. B. of ——, C. D. of ——, the two surviving children of L. B. late of —— deceased, send greeting: *Whereas* the said L. B. departed this life on or about the —— day of ——, intestate, leaving M. B. his widow

and relict and the said A. B. and C. D. their only children him surviving; and letters of administration of all his goods and chattels, rights and credits, estate and effects, were granted to the said M. B. his widow, on the —— day of —— under the seal of the surrogate court of the —— district, as thereby appears. *And whereas* the said M. B. hath duly collected in, paid and administered the estate and effects of the said deceased, and hath duly accounted with them the said A. B. and C. D. for the same, and hath paid and satisfied to each of them their proportion of the estate and effects of the said deceased,—that is to say, unto the said A. B. the sum of —— and unto the said C. D. the sum of ——, as they do hereby respectively admit and acknowledge. *Now these presents witness*, that in consideration of the premises, and of the sum of 5s. of lawful money of Upper Canada, to each of them the said A. B. and C. D. paid by the said M. B. at or before the sealing and delivery hereof, the receipt whereof is hereby respectively acknowledged, they the said A. B. and C. D. *have*, and each of them hath, remised, released, exonerated, and for ever quit claimed and discharged, and by these presents *do*, and each of them doth, remise, release, exonerate, and for ever quit claim and discharge, unto the said M. B. her executors and administrators, all and all manner of action and actions, suit and suits, cause and causes of action and suit, receipts, payments, accounts, debts, dues, transactions, transfers, savings, reckonings, claims and demands whatsoever, which against her, them, or any of them, the said A. B. or C. D. or the estate and effects of the said L. B. deceased, they the said A. B. and C. D. or either of them severally and resectively, ever had, now have or hath, or which they, their respective executors or administrators, can, shall, or may at any time or times hereafter have, claim, set up, challenge or demand, in any manner howsoever, for or on account of the said administration, or the estate and effects of the said L. B. deceased, antecedent to the day of the date of these presents.—*(Add indemnity clauses similar to the last form.)*

In witness, &c.

CHURCH PEW.

Assignment of a Pew in a Church.

This indenture witnesseth, that for and in consideration of the sum of —— of good and lawful money of Upper Canada, by A. B. of ——— to C. D. of ——— in hand, well and truly paid, at or before the sealing and delivery of these presents, the receipt whereof, is hereby acknowledged; he, the said C. D. *hath* given, granted, bargained, sold, assigned, transferred and set over, and

by these presents *doth* give, grant, bargain, sell, assign, transfer and set over unto the said A. B. *all that* pew, marked or numbered 10, situate and being in the chancel (or south side) of the church of St. John the Evangelist, in the town of Port Hope, in the district of Newcastle, lately occupied by the said C. D. and his family; and all the estate, right, title and interest of him, the said C. D. of, in and to the said pew; to have and to hold the same, with the appurtenances, unto the said A. B. his heirs, executors, administrators and assigns, to the intent, that he, the said A. B. his heirs, executors, administrators and assigns, his and their family and families, shall and may, from henceforth, from time to time, and at all times hereafter, peaceably and quietly enter into, have, use and occupy the said pew, for all such uses and purposes as are customary in attending divine service on all occasions, rites and ceremonies whatsoever, in the said church from henceforth for ever; *and the said* C. D. doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said A. B. his heirs, executors, administrators and assigns, that it shall and may be lawful to and for the said A. B. his heirs, executors, administrators and assigns, from time to time and at all times hereafter, peaceably and quietly to have, hold and enjoy the said pew, hereby assigned to the uses aforesaid, without the let, suit, hindrance or disturbance of the said C. D. or his family, or his, or their heirs, executors, administrators or assigns, or of any other person or persons, claiming or to claim the same, or any sitting, or being therein, by, from or under him, them or any of them. *In witness, &c.*

Addenda.

The form of certificate of "Bar of Dower," given in page 17, as also, that referred to in the memorial, page 18, is intended for the signature of the Chairman of the Quarter Sessions, or Judge of the District Court, under the 50 *G.* 3. *c.* 10.—(See Addenda, page 1.)—should the parties appear before either of these authorities.

The other usual form of Certificate, when the parties appear before *two* Justices, will be found in the body of the work, at page 156, title "Dower."

Care should be taken to insert in every memorial, the names and *abode* of the two witnesses to such memorial, thus: "which said indenture of bargain and sale, *(or mortgage, &c.)* is witnessed by A. B. of Toronto, and C. D. of Toronto. See 35 *G.* 3. *c.* 5. § 5.

Corrigenda.

Page 12, line 16, from the top, for *the* Justices, read "*two* Justices."
Page 24, line 8, from the top, for *mortgagor*, read "mortgagee."
Page 23, between the first and second lines, at the top, insert the Register's address, thus: "To the Register of the County of ——."

CIVIL DEPARTMENT.

LIEUTENANT GOVERNOR,

His Excellency Sir John Colborne, Knight Commander of the Most Honorable Military Order of the Bath, &c. &c. &c.

Private Secretary, Lieutenant Colonel Rowan.

LAW DEPARTMENT,

COURT OF KING'S BENCH.

Chief Justice, The Honorable John Beverly Robinson,

Puisne Judges, The Honorable Levius Peters Sherwood. The Honorable James Buchanan Macaulay.

Attorney General, Robert Sympson Jameson, Esq.

Solicitor General, Christopher A. Hagerman, Esq.

Reporter, William H. Draper, Esq.

ATTORNIES AND BARRISTERS.

NAMES AND RESIDENCE.	NAMES AND RESIDENCE.
Armstrong, Christopher; *Kingston.*	Cartwright, John S.; *Kingston.*
Bidwell, Marshall S.; *Toronto.*	Cline, Robert; *Cornwall.*
Buell, A. N.; *Brockville.*	Cassady, jun. Henry; *Kingston.*
Bogert, John; *Brockville.*	Campbell, Edward C.; *Niagara.*
Boswell, George M.; *Brockville.*	Cozens, William L.
Boulton, James; *Niagara.*	Claus, Warren; *Niagara.*
Beasley, Richard G.; *Hamilton.*	Draper, William H.; *Toronto.*
Baby, Charles; *Sandwich.*	Duggan, George; *Toronto.*
Bethune, Donald; *Kingston.*	Dougall, Benjamin; *Belleville.*
Burritt, Marcus; *Prescott.*	Dickson, Robert; *Niagara.*
Bell, John; *Toronto.*	Dickson, Walter H.; *Dundas.*
Burns, Robert E.; *St. Catherines.*	Elliott, William; *Sandwich.*
Baldwin, Robert; *Toronto.*	Ford, David B. O.; *Brockville.*
Burton, Edmund.	Fairfield, Dariah; *Hallowell.*
Berrie, Robert; *Hamilton.*	Foster, Colley A.; *Brantford.*
Boulton, George S.; *Cobourg.*	Freel, Peter; *Longuid.*
Boulton, D'Arcy; *Toronto.*	Grant, Alexander; *Toronto.*
Chewett, Alexander; *Sandwich.*	Gamble, Clark; *Toronto.*

NAMES AND RESIDENCE.

Givins, James; *St. Thomas.*
Hagerman, Christopher A.; *Toronto.*
Howard, Ch. H.; *Toronto.*
Hamilton, Robert.
Hatt, John O.; *Dundas.*
Hamilton, John; *Dundas.*
Hubbell, James; *Brockville.*
Hall, Charles L.; *Niagara.*
Jameson, Robert S.; *Toronto.*
Jones, David; *Brockville.*
Jones, Israel F. *Prescott.*
Jarvis, George S., *Cornwall.*
Jones, Ormond.
Jones, Stuart; *London.*
Kirkpatrick, Thomas; *Kingston.*
Kirkpatrick, Stafford F.; *Peterboro'.*
King, James; *Toronto.*
Lyons, John
Low, John; *By-town, Kingston.*
Malloch, George; *Brockville.*
Murney, Edmund; *Belleville.*
Malloch, John J.; *Perth.*
Myers, Adam H.; *River Trent.*
McLean, Archibald; *Cornwall.*
McDonald, J. R.; *Brantford.*
McNabb, Allan N.; *Hamilton, G. D.*
McDonell, Allan; *Hamilton, G. D.*
Macaulay, Simon H.; *Bath.*
McDonald, Rolland; *St. Catherines.*
McDonell, George M.; *Longueil.*
McIntosh, James; *L'Original.*
McKyes, Burrage T.; *Cobourg.*
McPherson, Lowther P.; *Hallowell.*
McMartin, Daniel; *Perth.*
Notman, William; *Ancaster.*
O'Reilly, Miles; *Hamilton, G. D.*
Oliver, Charles
Price, J. H.; *Toronto.*
Ridout, John; *Toronto.*
Richardson, Charles; *Niagara.*
Ridout, George; *Toronto.*
Rolph, George; *Dundas.*
Rapelje, Patrick W.; *Vittoria,*
Esqrs.

NAMES AND RESIDENCE.

Radenhurst, Thomas W.; *Perth.*
Small, Charles C.; *Toronto.*
Sherwood, Henry; *Brockville.*
Sherwood, George; *Brockville.*
Small, James E.; *Toronto.*
Smith, James; *Port Hope.*
Smith, Henry jun.; *Kingston.*
Secord, Charles B.; *Queenston.*
Samson, James H.; *Belleville.*
Smith, David W.; *St. Catherines.*
Sullivan, Robert B.; *Toronto.*
Salmon, William; *Vittoria.*
Stewart, John; *London.*
Spragge, John; *Toronto.*
Strachan, George C.; *Toronto.*
Stewart, Alexander; *Niagara.*
Taylor, Thomas H.; *Toronto.*
Taylor, Robert W.; *Hamilton, G. D.*
Tiffany, George S.; *Ancaster.*
Taylor, Joseph; *Perth.*
Wells, William B.
Wilkinson, Alexander; *Cornwall.*
Wallis, William; *Port Hope.*
Washburn, S.; *Toronto.*
Winterbottom, W. B.; *Niagara.*
Whitehead, M. F.; *Port Hope.*
Ward, George Charles; *Port Hope.*

ATTORNIES ADMITTED MICHAELMAS TERM, 1834.

John Wilson, *Johnstown.*
Henry Baldwin, *Belleville.*
John Powell, *Toronto.*

EASTER TERM, 1835.

Charles T. Baines.
William King Cornish, *London*
Charles Durand, *London.*
Elias Burnham.
John F. Taylor,
Esqrs.

MAGISTRACY OF UPPER CANADA.

EASTERN DISTRICT.

Commission, dated 15th May, 1835.

Samuel Anderson,
John McIntyre,
John Crysler,
Joseph Anderson,
Laurence McKay,
Benjamin French,
Alexander McKenzie,
William Morgan,
Alexander McMartin,
Duncan McDonell,
Guy C. Wood,
Alexander Rose,
Ambrose Blacklock,
Allan Cameron,
Alexander Chisholm,
Hon. John Hamilton,
Philip Vankoughnet,
Jonas Jones,
Hiram Norton,
George Langly,
Peter Shaver,
John Macaulay,
William R. F. Berford,
James Hume,
Alexander Fraser,
John McGillivray,
James Pringle,
D. Thompson,
Duncan Cameron,
Simon Fraser,
John Duncan Campbell,
Hugh McGillis,
James McDonell, of *Matilda*,
John McDonald, of *Grays Creek*,
Angus McDonell,
John McLellan,
Alpin Grant,
David Jones,
John Cameron,
Simon Clarke,
Michael Empey,
John Archibald,
William Bruce,
John Waldruff, jun.
Donald Æ. McDonell,
Alexander McLean,
William Cline,
Alexander M'Donald,
John McBean,
Donald Catanach,
Alexander McNab,
Archibald McDonald,
Neil McDonald,
Duncan Clark,
James W. Powell,
Angus Catanach, Esqrs.

DISTRICT OF OTTAWA.

Commission, dated 17th March, 1834.

John McDonell,
George Hamilton,
David Pattie,
Joseph Kellog,
Philip Hall,
John Brush,
Chauncey Johnson,
Charles Sheriff,
Joseph P. Cass,
John Cairnes,
James Molloy,
John Chesser,
James Fox,
Archibald McDonell, of *Osgoode*,
Peter McLaren,
Alexander McDonell,
Hugh McLachlin,
Charles A. Low,
William Coffin,
John Roe,
Peter Sterling,
Pradish Billings,
Neil Stewart,
Daniel Wyman,
Elijah Kellogg,
Thomas McKay,
Matthew Connell,
Simon Fraser,
George S. Jarvis,
Elisha Loukes,
Archibald Sterling,
William Wait, of *Longueil*, Esqrs,

DISTRICT OF JOHNSTOWN.

Commission, dated 22nd July, 1833.

Joel Stove,
Gideon Adams,
Stephen Burritt,
Richard Arnold,
Hugh Munro,
Daniel Burritt,
Uri Scovill,
Philip Phillips,
Lewis Grant,
Sylvester Wright,
Benjamin R. Munsell,
Richard Fraser,
Thomas Fraser,
Alexander Morris,
Thomas D. Campbell,
Rufus C. Henderson,
William Wells,
Abraham Dayton,
Alexander McMillan,
Bartholomew Carley,
William H. Bottom,
William Morris,
Freeman Hurd,
Henry Burritt,
Philip Dulmage,
Terence Smith,
Jonathan Fulford,
John Weatherhead,
Justus S. Merwin,
Archibald McLean,
Alpheus Jones,
Henry Jones,
Elnathan Hubbell
Dunham Jones,
William Brown,
James Morris,
William R. F. Berford,
John McLean,
John McDonald,
William L. Whiting,
Philip Shook,
John Deming,
William Kay,
William P. Loucks,
Basil R. Church,
Jonas Jones,
William McQueen,
James McIlmoyle,

William J. Scott,
Peter Schofield,
George Breakenridge,
Joseph Heartwell,
John Leggett,
Walter Atkins,
Robert Powell,
William Freeland,
George Crawford,
Samuel Thomas, jun.
George Longley,
William Weatherhead,
William Brooks,
Paul Glasford,
John Patton,
John L. Reade,
Hamilton D. Jessup,
Henry Bradfield,
James L. Schofield,
Nicholas Horton,
Thomas Sherfield,
John Kilburn,
James Shaw, *Crosby*,
John Hobson,
Robert Harvey,
Hiram Norton,
John K. Berford,
Richard Johnson,
Joseph Goff,
Robert Edmondson,
Nicholas Brisee, Esqrs.

DISTRICT OF BATHURST.

Commission, dated 12th November, 1833.

Alexander Thom,
William Morris,
William Marshall,
George John Burke,
Alexander McMillan,
William B. Bradley,
James Dent Weatherly,
John Benning Monk,
Joseph Maxwell,
Josias Taylor,
Sewell Ormsby,
Benjamin Street,
John Watson,
Roderick Matheson,
Alexander Fraser,
Anthony Lesslie,
Donald Fraser,
John F. Elliott,
Charles H. Sache,
Henry Graham,
Christopher J. Bell,
Robert Stephens,
Archibald McNabb,
George Lyon,
John B. Lewis,
Robert Sheriff,
Daniel Baird,
Henry Glass,
John Ferguson,
John Berford,
Hamet Pinhey,
William Rutherford,
Fitzwilliam Berford,
Daniel Fisher,
Matthew Leach,
Daniel McKinnon,
John Grenville,
Edward SamuelBradley,
John Richey,
Alexander McVicar,
George Tenant,
Edward Logan,
James Grierson,
John Hutchison,
James Rae,
James Wilson,
John Le Breton,
James Hume,
Anthony Philip,
John McIntyre,
Francis Hall,
George William Baker,
Matthew Connell,
Daniel O'Connor,
Benjamin Billings,
Simon Fraser,
Thomas McKay,
Alpin McMillan,
John Grant,
Andrew Buchanan,
James Mylie,
Ebenezer Willson,
Joshua Adams, Esqrs.

MIDLAND DISTRICT.

Commission, dated 13th December, 1834.

Robert Williams,
John Embury,
Thomas Markland,
William Crawford,
Jacob B. Chamberlain,
Solomon Hazleton,
Matthew Clarke,
Thomas Empey,
Thomas Sparham,
Benjamin Fairfield,
Isaac Fraser,
John Church,
Samuel Dorland,
Christopher German,
Charles Anderson,
Allan McPherson,
James Sampson,
Anthony Marshall,
John Macaulay,
Alexander Pringle,
Colin McKenzie,
Robert Richardson,
Richard Lowe,
John Turnbull,
WilliamJohnstonMcKay
Jonathan Allan,
Jacob Rambough,
John Marks,
Richard Hitchins,
Orton Hancox,
Jacob Shibley,
William Ketcheson,
Thomas Parker,
Peter Perry,
Anthony Manahan,
Samuel Clark,
Archibald Caton,
William Bower, jun.
Henry Smith,
George E. Ridley,
Laurence Herchmer,
Samuel Casey,
James McGregor,
Adam Krien,
Archibald McNiel,
James McFarlane,
George Baber,
William H. Gray,
Archibald McDonald, of *Hazel Bank*,
John Portt,
Edward Fidlar,
Allan Munro,
Elijah Ritcheson,
Thomas D. Appleby,
Solomon Solms.
Calvin Wheeler,
Donald Murcheson,
Benjamin Seymour,
Peter Davy,
Edward Howard,
Davis Hawley,
William Holditch,
William Simpkins,

Horace Yeomans,
William Logie,
Alexander Cowan, sen.
Thomas Asken,
John Strange,
Elijah Beach,
George H. Detler, Esqrs.

DISTRICT OF PRINCE EDWARD.

Commission, dated 15th March, 1834.

John Stinson,
James Cotter,
Reuben Bedle,
Henry McDonell,
Robert C. Wilkins,
Simeon Washburn,
James Dougall,
Alexander McDonell,
Hugh McDonell,
Griffith Howell,
Henry Dingman,
Guillian Demerest,
Andrew Deacon,
Benjamin Hubbs,
Samuel Solmes,
Charles Biggar,
David Smith,
David Wait,
Archibald McFaul,
Thomas Nash,
Owen McMahon,
Donald Bethune,
Charles Bocker,
David B. Stevenson,
William Dougall,
Daniel Haxe,
David Stinson,
James Thompson Lane,
Thomas Flagler,
Paul Clapp,
John P. Roblin,
John B. Way,
Thomas McMahon,
Andrew Kerr,
John Lane,
Henry Van Duzen,
Jacob Howell,
John Pepper Dowens,
James Fairfield,
Peter W. Ruttan,
George Drewry,
Benjamin Weller, Esqrs.

NEWCASTLE DISTRICT.

Commission, dated 9th January, 1835.

Elias Jones,
Richard Lovekin,
Alexander Fletcher,
Richard Hare,
John David Smith,
Robert C. Wilkins,
John Platt,
Robert Henry,
Samuel Street Wilmot,
Archibald McDonald,
Charles Rubridge,
James G. Bethune,
Benjamin Cumming,
John Taylor,
John Hutchison,
William Ouston,
Sheldon Hawley,
John Covert,
John Williams,
William Sowden,
David Smart,
William Falkner,
John Brown,
William Shaw,
Joseph A. Keeler,
John Leston,
Robert Reid,
Robert Fairbairn,
William Warren,
Patrick McGuire,
John Huston,
Eliakim Barnum,
James Rogers,
Francis Commin,
Thomas Car,
Thomas Walker,
John Steel,
Richard Birdsall,
Alexander McDonell,
John Hall,
John Burnham,
George G. Bird,
Alexander Sharp, sen.
Robert Brown,
John Logie,
Cheeseman Mac,
John Thompson,
George Hughes,
Thomas Murphy,
Edward Spring Hickson,
Ephraim Sanford,
Edward Duffy,
Robert Hamilton,
Daniel Griffith,
Jackson S. Stevenson,
J. Dunbar Moody,
Walter Crawford,
James Thompson,
Robert Jameson,
James Wallis,
Alexander McAndrew,
John Darcus,
Thomas Need,
George E. Hill,
Robert P. Madge,
William Smart,
John Hay,
David Campbell,
Francis Shea,
Thomas Masson,
John B. Crowe,
William Robertson,
John Gilchrist,
Benjamin Throop,
John Crease Boswell,
George Hane,
Ebenezer Perry,
Robert Butcher,
Charles G. Butler,
Thomas Reed,
Henry Duffield,
Walter Crawford,
William Kingsmill,
Dugald Campbell,
John Knowlson,
Allan Wilmot,
Henry Munroe,
Asa E. Walbridge, Esqrs.

HOME DISTRICT.

Commission, dated 27th March, 1833.

Alexander Wood,
William Chewett,
Grant Powell,
Stephen Jarvis,
William Thompson,
William Tyler,
D'Arcy Boulton,
James Miles,
James Fitzgibbon,
Francis Hewson,
Frederick Starr Jarvis,
Robert Charles Horner,
John Beikie,
Wm. Benj. Robinson,
John Scott,
William Parsons,
Christopher Widmer,

James O'Brien Bouchier,
William Dunlop,
Robert Stanton,
John Gamble,
William Proudfoot,
Wm. Johnson, *Georgina*,
William Turner,
William Crookshank,
Lewis Algeo,
Arad Smalley,
John Galbraith,
John Bagwell,
Peter McDonald,
Hector McQuarrie,
Joseph Carter,
Samuel Ridout,
Charles Coxwell Small,
John Lemon,
William Birdsall,
Peter Milne,
Benjamin Monger,
Joseph Adamson,
Laurence Hayden,
John Borlase Warren,
Alexander Armstrong,
George Ramsay,
William Woodin,
Thomas Gummersal Anderson,
James W. Hamilton,
Edward O'Brien,
John C. White,
Edward Favel Davis,
Malcolm Ross,
Arthur Carthew,
Charles Stanley Monk,
James Adams,
Robert Oliver,
William B. McVity,
Wm. Warren Baldwin,
James Winniett,
William Gamble,
John King,
George Monro,
Andrew Mercer,
Thomas Birchall,
Alexander Murray,
Robert Gillespie,
John Ross,
John Spread Baldwin,
James Frederick Smith,
Peter Paterson,
James G. Chewitt,
David Stegman,
Thomas Gibbs Ridout,
Walter O'Hara,
George T. Dennison,
Robert Hardiug,
John Scarlett,
Benjamin Thorne,
Richard Gapper,
John Barrick,
Simon Lee,
Joseph Wadsworth,
James Baldwin,
Thomas B. Phillips,
William Campbell,
Josias Taylor,
John Lynch,
Francis Campbell,
James Young,
George Lount,
William Algeo,
John Dawson,
William Laughton,
James Henderson,
Archibald Barker,
John Button,
Peter Beeson,
John Anderson,
Francis Leys,
Francis Tincombe,
Charles Fothergill,
Allan McLean, *Scarborough*,
Robert Douglas Hamilton.
William Raines,
John Mills Jackson,
Francis Osburne,
William Gibbs,
Thomas Mossington, *Eldon*,
Wm. Bagshaw, *Brock*,
Matthew Cowan,
Elmes Steel,
Edward Ryall,
John Coates,
Thomas McConkey,
John Carthew,
John Thompson, *Orillia*,
Anthony B. Hawke,
Thomas Henderson,
Andrew Mitchell,
Samuel Richardson,
Frederick Stephens, *Tecumseth*,
Robert Newcomen Algeo,
Meyrick Lally,
Edward W. Thompson,
Esqrs.

DISTRICT OF GORE.

Commission, dated 2nd April, 1838.

William Crooks,
John Wilson,
James McBride,
Hugh Wilson,
William Ellis,
James Racey,
Matthew Crooks,
Daniel O'Reilly,
John Secord,
Philip Sovereign,
Manual Berfield,
William Proctor,
Thomas Lepard,
Thomas Smith,
William Holme,
Elijah Secord,
Robert Murray,
Richard Beasley,
William Chisholm,
William Scollick,
William Dunlop,
William Richardson,
Thomas Stephens,
William McKay,
Robert Land,
Peter Hunter Hamilton,
William B. Van Every,
Benjamin Wilson,
Nathaniel Bell,
Alexander Proudfoot,
Henry Trout,
John Chalmers,
John Sterritt,
Thomas Fyffe,
Hugh Crene,
Charles Prior,
John Brewster,
John Sprout,
Daniel K. Servos,
Daniel Lewis,
Absalom Shade,
Alexander Roxborough,
Edward Richie,
David Arch. McNabb,
Michael Aickman,
Edmond Huntley,
Geoffry Lynch,
Colin Campbell Ferrie,
Asmand Charles Huntley,
——— Haycock,
Henry Strange,
William Heath,

Samuel Crawford,
John Watson,
John Inglis,
Job Lodor,
William Brit,
James Winniett,
James Gilpin,
William Muirhead,
Thomas Armstrong,
Hiram Smith,
Andrew Gage,
James Wilson,
Chals.Kennedy, of *Erin*,
John Burns,
Joseph Bowes,
George Brown,
Charles Biggars,
John Williamson,
John Lowe,
Thomas Choate,
George Chisholm, sen,
Andrew Todd Kirby,
John Aickman, jun.
Thomas Harris,
James Hamilton,
James B. Ewart,
William Reynolds,
Rowland Wingfied,
George Hamilton,
Francis Leonard, Esqrs.

DISTRICT OF NIAGARA.

Commission, dated 31st May, 1833.

James Muirhead,
Robert Nelles,
William Crooks,
Robert Grant,
Peter Ball,
Samuel Street,
George Adams,
George Keefer,
Thomas McCormick,
Alexander Hamilton,
James Cummings,
James Macklin,
John D. Servos,
Wm. Hamilton Merritt,
Warren Nelles.
George Balls,
John Usher,
Robert Hamilton,
Henry Warren,
Daniel McDougall,
Mordan Crysler,
Thomas Merritt.
John Powel Tweed,
Henry Nelles,
James Black,
William Anthony,
John Claus,
George Stevens,
Robert H. Dee,
David Thompson,
Henry William Nelles,
Smith Griffin,
Benjamin Canley,
Edward Evans,
Thomas Butler,
George Ridout,
General John Murray,
Robert Mellville,
James Lockhart,
John C. Ball,
William Ball,
John Newburn,
Lewis Clement,
Ogden Creighton,
James Robinson,
Lieut.Col.Philip Delatre,
Malcolm Lang,
Jacob Keefer,
James H. Mackenzie,
William Mylne,
Dr. John Lefferty,
George Rykert,
James Birdsall,
George Connolly,
Bartholomew Tench,
William Nelles,
William Duff,
William Smith,
Alexander Douglas,
James Johnson,
Lieut.-Col.Arthur Jones,
Edmund Ricely,
Henry Mittleburger,
William Adams,
James W. O. Clark,
John McGlashan, jun.
Cyrus Sumner,
Elias Smith Adams,
Captain Tench,
Isaac Johnson,
Michael Graybiel,
Amos Bradshaw,
Duncan McFarland,
Lesslie Paterson,
John Cleveland Green,
Nathaniel Pauling,
John Gibson,
Richard Woodruff,
John S. Alma,
Crowell Wilson,
Lieut. Chrls. Jones, R.N.
James Cooper,
Samuel Birdsall,
William M. Ball, Esqrs.

DISTRICT OF LONDON.

Commission, dated 25th July, 1833.

Peter Teeple,
Thomas Hornor,
James Mitchell,
Joseph Ryerson,
Thomas Boulby,
Mahlon Burwell,
George C. Salmon,
James Hamilton,
James Graham,
James Racey,
Lesslie Patterson,
Ira Schofield,
Henry Warren,
John Bostwick,
John Hatch,
Solomon Lossing,
Israel Wood Powell,
William Wilson,
Andrew Dobie,
Edward Allen Talbot,
Duncan Mackenzie,
Henry White,
Isaac Draper,
James McKinlay,
Jacob Potts, jun.
John Kirkpatrick,
Duncan Campbell,
Henry Carroll,
John Waddell,
Gilbert Wrong,
Samuel Edison,
John McDonald,
Duncan Warren,
William Robertson,
John G. Lossey,
John Burdick,
John Scatchard,
Benjamin Wilson,
Charles Prior,
John Brewster,
Peter Hamilton,
Colin McNeilledge,

Captain Andrew Drew,
Major James Barwick,
James Hulton,
Peter Carroll,
James Ingersoll,
John Burwell,
Robert Guy Kirkland,
Alexander Richardson,
Roswell Mount,
Joseph B. Clench,
James Nevills,
Samuel Eccles,
William Young,
Colonel Alex. Whalley Light,
John Warren,
Captain Robert Dunlop,
Edward Buller,
Captain Philip Graham,
Christopher Beer,
Thomas Radcliff,
Edward Ermatinger,
James Clement Crysler,
John McFarlane,
Captain Robert Johnson,
Eliakim Malcolm,
Benjamin Springer,
John Boys,
William Gordon, *Zorra*,
John Philpot Curran,
Walter Mackenzie,
Henry Allison,
Richard Noble Starr, Esqrs.

WESTERN DISTRICT.

Commission, dated 11th November, 1833.

Francis Baby,
Jean Baptiste Baby,
George Jacob,
William Duff,
John Dolson,
William McCrea,
William McCormick,
William Jones,
Israel Smith,
Claude Gouin,
Isaac Bell,
George Jacob, jun.
William Berczy,
Jean Baptiste Macon,
Charles Eliot,
John G. Watson,
Charles Berczy,
Lewis Gordon,
George Kirby,
Duncan McGregor,
James Askin,
Francis Caldwell,
Matthew Elliott,
Charles Fortier,
William Elliott Wright,
John Prince,
Joseph Woods,
Robert Jones,
Duncan Warren,
James W. Little,
Joseph Smith,
Alexander Walker,
Henry Jones, sen.
George Hyde,
Alfred Toulmin,
Robert Watson,
Frome Talfourd,
Henry Jones, sen.
George Durand,
Alex. Thomas E. Videil,
Field Talfourd,
Lewis Rendt,
Harry Alison,
Arthur William Freear,
——— Rothwell,
John Scratch,
Prideaux Girty,
Wm. Ambridge, Esqrs.

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