

PART LVIII.

SUMMARY CONVICTIONS.

839. In this part, unless the context otherwise requires—

(a) the expression "justice" means a justice of the peace and includes two or more justices if two or more justices act or have jurisdiction, and also a police magistrate, a stipendiary magistrate and any person having the power or authority of two or more justices of the peace;

(b) the expression "clerk of the peace" includes the proper officer of the court having jurisdiction in appeal under this part, as provided by section eight hundred and seventy-nine;

(c) the expression "territorial division" means district, county, union of counties, township, city, town, parish or other judicial division or place;

(d) the expression "district" or "county" includes any territorial or judicial division or place in and for which there is such judge, justice, justice's court, officer or prison as is mentioned in the context;

(e) the expression "common gaol" or "prison" means any place other than a penitentiary in which persons charged with offences are usually kept and detained in custody. R. S. C. c. 178, s. 2.

840. Subject to any special provision otherwise enacted with respect to such offence, act or matter, this part shall apply to—

(a) every case in which any person commits, or is suspected of having committed, any offence or act over which the Parliament of Canada has legislative authority, and for which such person is liable on summary conviction to imprisonment, fine, penalty or other punishment;

(b) every case in which a complaint is made to any justice in relation to any matter over which the Parliament of Canada has legislative authority, and with respect to which such justice has authority by law to make any order for the payment of money or otherwise. R. S. C. c. 178, s. 3.

841. In the case of any offence punishable on summary conviction if no time is specially limited for making any complaint, or laying any information in the Act or law relating to the particular case, the complaint shall be made, or the information shall be laid within six months from the time when the matter of complaint or information arose, except in the North-west Territories, where the time within which such complaint may be made, or such information may be laid, shall be extended to twelve months from the time when the matter of the complaint or information arose. 52 V. c. 45, s. 4.

The repealed clause extended the limitation of twelve months to the territory east of Portneuf on the north shore of the St. Lawrence.

842. Every complaint and information shall be heard, tried, determined and adjudged by one justice or two or more justices as directed by the Act or law upon which the complaint or information is framed or by any other Act or law in that behalf.

2. If there is no such direction in any Act or law then the complaint or information may be heard, tried, determined and adjudged by any one justice for the territorial division where the matter of the complaint or information arose : Provided that every one who aids, abets, counsels or procures the commission of any offence punishable on summary conviction, may be proceeded against and convicted either in the territorial division or place where the principal offender may be convicted, or in that in which the offence of aiding, abetting, counselling or procuring was committed.

3. Any one justice may receive the information or complaint, and grant a summons or warrant thereon, and issue his summons or warrant to compel the attendance of any witnesses for either party, and do all other acts and matters necessary preliminary to the hearing, even if by the statute in that behalf it is provided that the information or complaint shall be heard and determined by two or more justices.

4. After a case has been heard and determined one justice may issue all warrants of distress or commitment thereon.

5. It shall not be necessary for the justice who acts before or after the hearing to be the justice or one of the justices by whom the case is to be or was heard and determined.

6. If it is required by any Act or law that an information or complaint shall be heard and determined by two or more justices, or that a conviction or order shall be made by two or more justices, such justices shall be present and acting together during the whole of the hearing and determination of the case.

8. No justice shall hear and determine any case of assault or battery, in which any question arises as to the title to any lands, tenements, hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice. R. S. C. c. 178, ss. 4, 5, 6, 7, 8, 9, 12, and 73.

See s. 864, post, as to cases of assault.

843. The provisions of Parts XLIV. and XLV. of this Act relating to compelling the appearance of the accused before the justice receiving an information under section five hundred and fifty-eight, and the provisions respecting the attendance of witnesses on a preliminary inquiry and the taking of evidence thereon, shall, so far as the same are applicable, except as varied by the sections immediately following, apply to any hearing under the provisions of this part: Provided that whenever a warrant is issued in the first instance against a person charged with an offence punishable under the provisions of this part, the justice issuing it shall furnish a copy or copies thereof, and cause a copy to be served on the person arrested at the time of such arrest.

2. Nothing herein contained shall oblige any justice to issue any summons to procure the attendance of a person charged with an offence by information laid before such justice whenever the application for any order may, by law, be made *ex parte*. R. S. C. c. 178, ss. 13 to 17 and 21. *Quære?*

844. The provisions of section five hundred and sixty-five relating to the endorsement of warrants shall apply to the case of any warrant issued under the provisions of this part against the accused, whether before or after conviction, and whether for the apprehension or imprisonment of any such person. R. S. C. c. 178, s. 22. 52 V. c. 45, s. 4.

845. It shall not be necessary that any complaint upon which a justice may make an order for the payment of money or otherwise shall be in writing, unless it is so required by some particular Act or law upon which such complaint is founded.

2. Every complaint upon which a justice is authorized by law to make an order, and every information for any offence or act punishable on summary conviction, may, unless it is herein or by some particular Act or law otherwise provided, be made or had without any oath or affirmation as to the truth thereof.

3. Every complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every information shall be for one offence only, and not for two or more offences; and every complaint or information may be laid or made by the complainant or informant in person, or by his counsel or attorney or other person authorized in that behalf. R. S. C. c. 178, ss. 23, 24 and 26.

New.

846. No information, complaint, warrant, conviction or other proceeding under this part shall be deemed objectionable or insufficient on any of the following grounds; that is to say:

(a) that it does not contain the name of the person injured, or intended or attempted to be injured; or

(b) that it does not state who is the owner of any property therein mentioned; or

(c) that it does not specify the means by which the offence was committed; or

(d) that it does not name or describe with precision any person or thing:

Provided that the justice may, if satisfied that it is necessary for a fair trial, order that a particular further describing such means, person, place or thing be furnished by the prosecutor.

847. No objection shall be allowed to any information, complaint, summons or warrant for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced on the part of the informant or complainant at the hearing of such information or complaint.

2. Any variance between the information for any offence or act punishable on summary conviction and the evidence adduced in support thereof as to the time at which such offence or act is alleged to have been committed, shall not be deemed material if it is proved that such information was, in fact, laid within the time limited by law for laying the same.

3. Any variance between the information and the evidence adduced in support thereof, as to the place in which the offence or act is alleged to have been committed, shall not be deemed material if the offence or act is proved to

have been committed within the jurisdiction of the justice by whom the information is heard and determined.

4. If any such variance, or any other variance between the information, complaint, summons or warrant, and the evidence adduced in support thereof, appears to the justice present and acting at the hearing to be such that the defendant has been thereby deceived or misled, the justice may, upon such terms as he thinks fit, adjourn the hearing of the case to some future day. R. S. C. c. 178, s. 28.

848. A summons may be issued to procure the attendance, on the hearing of any charge under the provisions of this part, of a witness who resides out of the jurisdiction of the justices before whom such charge is to be heard, and such summons and a warrant issued to procure the attendance of a witness, whether in consequence of refusal by such witness to appear in obedience to a summons or otherwise, may be respectively served and executed by the constable or other peace officer to whom the same is delivered or by any other person, as well beyond as within the territorial division of the justice who issued the same. 51 V. c. 45, ss. 1 & 3.

849. The room or place in which the justice sits to hear and try any complaint or information shall be deemed an open and public court, to which the public generally may have access so far as the same can conveniently contain them. R. S. C. c. 178, s. 33.

850. The person against whom the complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf.

2. Every complainant or informant in any such case shall be at liberty to conduct the complaint or information, and to have the witnesses examined and cross-examined, by counsel or attorney on his behalf. R. S. C. c. 178, ss. 34 & 35.

851. Every witness at any hearing shall be examined upon oath or affirmation, and the justice before whom any witness appears for the purpose of being examined shall have full power and authority to administer to every witness the usual oath or affirmation. R. S. C. c. 178, s. 36.

Sections 37 and 38 of c. 178 are left out.

852. If the information or complaint in any case negatives any exemption, exception, proviso or condition in the statute on which the same is founded it shall not be necessary for the prosecutor or complainant to prove such negative, but the defendant may prove the affirmative thereof in his defence if he wishes to avail himself of the same. R. S. C. c. 178, s. 47.

853. In case the accused does not appear at the time and place appointed by any summons issued by a justice on information before him of the commission of an offence punishable on summary conviction, then if it appears to the satisfaction of the justice that the summons was duly served a reasonable time before the time appointed for appearance, such justice may proceed *ex parte* to hear and determine the case in the absence of the defendant, as fully

and effectually, to all intents and purposes, as if the defendant had personally appeared in obedience to such summons, or the justice may, if he thinks fit, issue his warrant as provided by section five hundred and sixty-three of this Act and adjourn the hearing of the complaint or information until the defendant is apprehended. R. S. C. c. 178, s. 39.

854. If, upon the day and at the place so appointed, the defendant appears voluntarily in obedience to the summons in that behalf served upon him, or is brought before the justice by virtue of a warrant, then, if the complainant or informant, having had due notice, does not appear by himself, his counsel or attorney, the justice shall dismiss the complaint or information unless he thinks proper to adjourn the hearing of the same until some other day upon such terms as he thinks fit. R. S. C. c. 178, s. 41.

855. If both parties appear, either personally or by their respective counsel or attorneys, before the justice who is to hear and determine the complaint or information, such justice shall proceed to hear and determine the same. R. S. C. c. 178, s. 42.

856. If the defendant is present at the hearing the substance of the information or complaint shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted, or why an order should not be made against him, as the case may be.

2. If the defendant thereupon admits the truth of the information or complaint, and shows no sufficient cause why he should not be convicted, or why an order should not be made against him, as the case may be, the justice present at the hearing shall convict him or make an order against him accordingly.

3. If the defendant does not admit the truth of the information or complaint, the justice shall proceed to inquire into the charge and for the purposes of such inquiry shall take the evidence of witnesses both for the complainant and accused in the manner provided by Part XLV. in the case of a preliminary inquiry; *Provided that the prosecutor or complainant is not entitled to give evidence in reply if the defendant has not adduced any evidence other than as to his general character; provided further, that in a hearing under this section the witnesses need not sign their depositions.* R. S. C. c. 178, ss. 43, 44, 45 & 46.

857. Before or during the hearing of any information or complaint the justice may, in his discretion, adjourn the hearing of the same to a certain time or place to be then appointed and stated in the presence and hearing of the party or parties, or of their respective solicitors or agents then present, but no such adjournment shall be for more than *eight* days.

2. If, at the time and place to which the hearing or further hearing is adjourned, either or both of the parties do not appear, personally or by his or their counsel or solicitors respectively, before the justice or such other justice as shall then be there, the justice who is then there may proceed to the hearing or further hearing as if the party or parties were present.

3. If the prosecutor or complainant does not appear the justice may dismiss the information, with or without costs, as to him seems fit.

4. Whenever any justice adjourns the hearing of any case he may suffer the defendant to go at large or may commit him to the common gaol or other prison within the territorial division for which such justice is then acting, or to such other safe custody as such justice thinks fit, or may discharge the defendant upon his recognizance, with or without sureties at the discretion of such justice, conditioned for his appearance at the time and place to which such hearing or further hearing is adjourned.

5. Whenever any defendant who is discharged upon recognizance, or allowed to go at large, does not appear at the time mentioned in the recognizance, or to which the hearing or further hearing is adjourned, the justice may issue his warrant for his apprehension. R. S. C. c. 178, ss. 48, 49, 50 & 51.

858. The justice, having heard what each party has to say, and the witnesses and evidence adduced, shall consider the whole matter, and, unless otherwise provided, determine the same and convict or make an order against the defendant, or dismiss the information or complaint, as the case may be. R. S. C. c. 178, s. 52.

859. If the justice convicts or makes an order against the defendant a minute or memorandum thereof shall then be made, for which no fee shall be paid, and the conviction or order shall afterwards be drawn up by the justice on parchment or on paper, under his hand and seal, in such one of the forms of conviction or of orders from VV to AAA inclusive in schedule one to this Act as is applicable to the case or to the like effect. R. S. C. c. 178, s. 53.

FORMS UNDER PART LVIII.

VV.—(Section 859).

CONVICTION FOR A PENALTY TO BE LEVIED BY DISTRESS AND IN DEFAULT OF SUFFICIENT DISTRESS, BY IMPRISONMENT.

Canada,
Province of },
County of }.

Be it remembered that on the day of , in
the year , at , in the said county, A. B. is con-
victed before the undersigned, a justice of the peace for the said
county, for that the said A. B. (*etc., stating the offence, and the
time and place when and where committed*), and I adjudge the said
A. B. for his said offence to forfeit and pay the sum of \$
(*stating the penalty, and also the compensation, if any*), to be paid

and applied according to law, and also to pay to the said C. D. the sum of , for his costs in this behalf; and if the said several sums are not paid forthwith, (or on or before the of next), * I order that the same be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress, * I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at in the said county of , (there to be kept at hard labour, if such is the sentence) for the term of , unless the said several sums and all costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said gaol) are sooner paid.

Given under my hand and seal, the day and year first above mentioned, at , in the county aforesaid.

J. S., [SEAL].

J. P., (Name of county).

* Or when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears he has no goods whereon to levy a distress, then instead of the words between the asterisks * * say, "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (or, "that the said A. B. has no goods or chattels whereon to levy the said sums by distress").

WW.—(Section 859.)

CONVICTION FOR A PENALTY, AND IN DEFAULT OF PAYMENT IMPRISONMENT.

Canada, }
Province of , }
County of . }

Be it remembered that on the day of in the year , at , in the said county, A. B. is convicted before the undersigned, a justice of the peace for the said county for that he the said A. B. etc., stating the offence, and the time and place when and where it was committed), and I adjudge the said A. B. for his said offence to forfeit and pay the sum of (stating the penalty and the compensation, if any) to be paid and applied according to law; and also to pay to the

said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (*or, on or before next*), I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at , in the said county of (and there to be kept at hard labour) for the term of , unless the said sums and the costs and charges of conveying the said A. B. to the said common gaol are sooner paid.

Given under my hand and seal, the day and year first above mentioned at , in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county*).

XX.—(*Section 859.*)

CONVICTION WHEN THE PUNISHMENT IS BY IMPRISONMENT,
ETC.

Canada,
Province of },
County of }

Be it remembered that on the day of , in the year , at , in the said county, A. B. is convicted before the undersigned, , a justice of the peace in and for the said county, for that he the said A. B. (*&c., stating the offence, and the time and place when and where it was committed*); and I adjudge the said A. B., for his said offence, to be imprisoned in the common gaol of the said county, at , in the county of , (and there to be kept at hard labour) for the term of ; and I also adjudge the said A. B. to pay to the said C. D. the sum of , for his costs in this behalf, and if the said sum for costs are not paid forthwith (*or on or before next*), then * I order that the said sum be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress in that behalf, * I adjudge the said A. B. to be imprisoned in the said common gaol (and kept there at hard labour) for the term of , to commence at and from the term of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

Given under my hand and seal, the day and year first above mentioned at _____, in the county aforesaid.

J. S. [SEAL.]

J. P., (Name of county.)

**Or when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then, instead of the words between the asterisks * * say, "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (or, "that the said A. B. has no goods or chattels whereon to levy the said sum for costs by distress").*

YY.—Section 859.)

ORDER FOR PAYMENT OF MONEY TO BE LEVIED BY DISTRESS
AND IN DEFAULT OF DISTRESS IMPRISONMENT.

Canada, }
Province of }
County of }

Be it remembered that on _____, complaint was made before the undersigned, _____, a justice of the peace in and for the said county of _____, for that (stating the facts entitling the complainant to the order, with the time and place when and where they occurred), and now at this day, to wit, on _____, at _____, the parties aforesaid appear before me the said justice (or the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me on oath that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here on this day before me or such justice or justices of the peace for the county, as should now be here, to answer the said complaint, and to be further dealt with according to law); and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of _____ forthwith (or on or before _____ next, or as the Act or law requires), and also to pay to the said said C. D. the sum of _____ for his costs in this behalf; and if the said several sums are not paid forthwith (or

on or before next), then, * I hereby order that the same be levied by distress and sale of the goods and chattels of the said A. B. and in default of sufficient distress in that behalf * I adjudge the said A. B. to be imprisoned in the common gaol of the said county, at , in the said county of , and there kept at hard labour) for the term of , unless the said several sums, and all costs and charges of the said distress (and the commitment and conveyance of the said A. B. to the said common gaol) are sooner paid.

Given under my hand and seal, this day of ,
in the year , at in the county aforesaid.

J. S., [SEAL.]

J. P., (Name of county.)

**Or, when the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears he has no goods whereon to levy a distress, then, instead of the words between the asterisks * * say "inasmuch as it is now made to appear to me that the issuing of a warrant of distress in this behalf would be ruinous to the said A. B. and his family," (or "that the said A. B. has no goods or chattels whereon to levy the said sums by distress").*

ZZ.—(Section 859.)

ORDER FOR PAYMENT OF MONEY, AND IN DEFAULT OF PAY-
MENT IMPRISONMENT.

Canada,
Province of }
County of . }

Be it remembered that on complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (stating the facts entitling the complainant to the order, with the time and place when and where they occurred), and now on this day, to wit, on , at , the parties aforesaid appear before me the said justice (or the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me upon oath that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here this

day before me, or such justice or justices of the peace for the said county, as should now be here, to answer to the said complaint, and to be further dealt with according to law), and now having heard the matter of the said complaint, I do adjudge the said A. B. to pay to the said C. D. the sum of forthwith (or on or before next, or as the Act or law requires), and also to pay to the said C. D. the sum of for his costs in this behalf; and if the said several sums are not paid forthwith (or on or before next), then I adjudge the said A. B. to be imprisoned in the common gaol of the said county at , in the said county of , (there to be kept at hard labour if the Act or law authorizes this) for the term of unless the said several sums (and costs and charges of commitment and conveying the said A. B. to the said common gaol) are sooner paid.

Given under my hand and seal this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (Name of county).

AAA.—(Section 859.)

ORDER FOR ANY OTHER MATTER WHERE THE DISOBEYING OF IT IS PUNISHABLE WITH IMPRISONMENT.

Canada, }
Province of , }
County of . }

Be it remembered that on , complaint was made before the undersigned, , a justice of the peace in and for the said county of , for that (stating the facts entitling the complainant to the order, with the time and place where and when they occurred); and now on this day, to wit, on , at , the parties aforesaid appear before me the said justice (or the said C. D. appears before me the said justice, but the said A. B., although duly called, does not appear by himself, his counsel or attorney, and it is now satisfactorily proved to me, upon oath, that the said A. B. was duly served with the summons in this behalf, which required him to be and appear here this day before me, or such justice or justices of the peace for the said

county, as should now be here to answer to the said complaint and to be further dealt with according to law; and now having heard the matter of the said complaint, I do adjudge the said A. B. to (*here state the matter required to be done*), and if, upon a copy of the minute of this order being served upon the said A. B., either personally or by leaving the same for him at his last or most usual place of abode, he neglects or refuses to obey the same, in that case I adjudge the said A. B., for such his disobedience, to be imprisoned in the common gaol of the said county, at _____ in the said county of _____, (there to be kept at hard labour, *if the statute authorizes this*), for the term of _____ unless the said order is sooner obeyed, and I do also adjudge the said A. B. to pay to the said C. D. the sum of _____

for his costs in this behalf, and if the said sum for costs is not paid forthwith (*or on or before* _____ next), I order the same to be levied by distress and sale of the goods and chattels of the said A. B., and in default of sufficient distress in that behalf I adjudge the said A. B. to be imprisoned in the said common gaol (there to be kept at hard labour) for the space of _____, to commence at and from the termination of his imprisonment aforesaid, unless the said sum for costs is sooner paid.

Given under my hand and seal, this _____ day of _____, in the year _____, at _____, in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county.*)

860. When several persons join in the commission of the same offence, and upon conviction thereof each is adjudged to pay a penalty which includes the value of the property, or the amount of the injury done, no further sum shall be paid to the person aggrieved than such amount or value, and costs, if any, and the residue of the penalties imposed shall be applied in the same manner as other penalties imposed by a justice are directed to be applied. R. S. C. c. 178, s. 54.

861. Whenever any person is summarily convicted before a justice of any offence against *Parts XX. to XXX. inclusive* or *Part XXXVII.* of this Act and it is a first conviction, the justice may, if he thinks fit, discharge the offender from his conviction upon his making such satisfaction to the person aggrieved, for damages and costs, or either of them, as are ascertained by the justice. R. S. C. c. 178, s. 55.

862. If the justice dismisses the information or complaint he may, when required so to do, make an order of dismissal in the form BBB in schedule one hereto, and he shall give the defendant a certificate in the form CCC in the said schedule, which certificate, upon being afterwards produced, shall, without further proof, be a bar to any subsequent information or complaint for the same matter, against the same defendant. R. S. C. c. 178, s. 56.

BBB.—(Section 862.)

FORM OF ORDER OF DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada,)
Province of)
County of)

Be it remembered that on _____, information was laid (or complaint was made) before the undersigned, _____, a justice of the peace in and for the said county of _____, for that _____ (*etc., as in the summons of the defendant*) and now at this day, to wit, on _____, at _____, (*if at any adjournment insert here: "to which day the hearing of this case was duly adjourned, of which the said C. D. had due notice,"*) both the said parties appear before me in order that I should hear and determine the said information (or complaint) (or the said A. B. appears before me, but the said C. D., although duly called, does not appear); [whereupon the matter of the said information (or complaint) being by me duly considered, it manifestly appears to me that the said information (or complaint) is not proved, and] (*if the informant or complainant does not appear, these words may be omitted,*) I do therefore dismiss the same, and do adjudge that the said C. D. do pay to the said A. B. the sum of _____, for his costs incurred by him in defence in his behalf; and if the said sum for costs is not paid forthwith (or on or before _____), I order that the same be levied by distress and sale of the goods and chattels of the said C. D., and in default of sufficient distress in that behalf, I adjudge the said C. D. to be imprisoned in the common gaol of the said county of _____, at _____, in the said county of _____ (and there kept at hard labour) for the term of _____, unless the said sum for costs, and all costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said common gaol) are sooner paid.

Given under my hand and seal, this day of
in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (Name of county).

CCC.—(Section 862.)

FORM OF CERTIFICATE OF DISMISSAL.

Canada,)
Province of)
County of)

I hereby certify that an information (or complaint) preferred
by C. D. against A. B. for that (*&c.*, as in the summons) was this
day considered by me, a justice of the peace in and for the said
county of , and was by me dismissed (with costs)

Dated at , this day of , in the
year.

J. S.,

J. P., (Name of county).

863. Whenever, by any Act or law, authority is given to commit a
person to prison, or to levy any sum upon his goods or chattels by distress, for
not obeying an order of a justice, the defendant shall be served with a copy of
the minute of the order before any warrant of commitment or of distress is
issued in that behalf; and the order or minute shall not form any part of the
warrant of commitment or of distress. R. S. C. c. 173. s. 57.

864. Whenever any person unlawfully assaults or beats any other
person, any justice may summarily hear and determine the charge, *unless at*
the time of entering upon the investigation the person aggrieved or the person
accused objects thereto.

2. If such justice is of opinion that the assault or battery complained of is,
from any other circumstance, a fit subject for prosecution by indictment, he
shall abstain from any adjudication thereupon, and shall deal with the case in
all respects in the same manner as if he had no authority finally to hear and
determine the same. R. S. C. c. 173, s. 73.

See s. 842, s-B. 8, ante.

865. If the justice, upon the hearing of any case of assault or battery
upon the merits where the complaint is preferred by or on behalf of the person
aggrieved, under the next preceding section, deems the offence not to be proved,
or finds the assault or battery to have been justified, or so trifling as not to
merit any punishment, and accordingly dismisses the complaint, he shall
forthwith make out a certificate under his hand stating the fact of such dis-

missal, and shall deliver such certificate to the person against whom the complaint was preferred. R. S. C. c. 178, s. 74.

866. If the person against whom any such complaint has been preferred, by or on the behalf of the person aggrieved, obtains such certificate, or, having been convicted, pays the whole amount adjudged to be paid or suffers the imprisonment, or imprisonment with hard labour, awarded, he shall be released from all further or other proceedings, civil or criminal, for the same cause. R. S. C. c. 178, s. 75.

867. In every case of a summary conviction, or of an order made by a justice, such justice may, in his discretion, award and order in and by the conviction or order that the defendant shall pay to the prosecutor or complainant such costs as to the said justice seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before justices. R. S. C. c. 178, s. 58.

868. Whenever the justice, instead of convicting or making an order, dismisses the information or complaint, he may, in his discretion, in and by his order of dismissal, award and order that the prosecutor or complainant shall pay to the defendant such costs as to the said justice seem reasonable and consistent with law. R. S. C. c. 178, s. 59.

869. The sums so allowed for costs shall, in all cases, be specified in the conviction or order, or order of dismissal, and the same shall be recoverable in the same manner and under the same warrants as any penalty, adjudged to be paid by the conviction or order, is to be recovered. R. S. C. c. 178, s. 60.

870. Whenever there is no such penalty to be recovered such costs shall be recoverable by distress and sale of the goods and chattels of the party, and in default of distress, by imprisonment, with or without hard labour, for any term not exceeding one month. R. S. C. c. 178, s. 61.

871. The fees mentioned in the following tariff and no others shall be and constitute the fees to be taken on proceedings before justices in proceedings under this part:—

Fees to be taken by Justices of the Peace or their Clerks.

	\$	c.
1. Information or complaint and warrant or summons.....	0	50
2. Warrant where summons issued in first instance.....	0	10
3. Each necessary copy of summons or warrant.....	0	10
4. Each summons or warrant to or for a witness or witnesses. (Only one summons on each side to be charged for in each case, which may contain any number of names. If the justice of the case requires it, additional summonses shall be issued without charge).....	0	10
5. Information for warrant for witness and warrant.....	0	50
6. Each necessary copy of summons or warrant for witness.....	0	10
7. For every recognizance.....	0	25
8. For hearing and determining case.....	0	50
9. If case lasts over two hours.....	1	00

10. Where one justice alone cannot lawfully hear and determine the case, the same fee for hearing and determining to be allowed to the associate justice. \$ c.
11. For each warrant of distress or commitment. 0 25
12. For making up record of conviction or order where the same is ordered to be returned to sessions or on *certiorari*. 1 00
But in all cases which admit of a summary proceeding before a single justice and wherein no higher penalty than \$20 can be imposed, there shall be charged for the record of conviction not more than. 0 50
13. For copy of any other paper connected with any case, and the minutes of the same if demanded per folio of 100 words. 0 05
14. For every bill of costs when demanded to be made out in detail. 0 10
(Items 13 and 14 to be chargeable only when there has been an adjudication).

Constables' Fees.

1. Arrest of each individual upon a warrant. 1 00
2. Serving summons. 0 25
3. Mileage to serve summons or warrant, per mile (one way) necessarily travelled. 0 10
4. Same mileage when service cannot be effected, but only upon proof of due diligence.
5. Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in his conveyance. 0 10
7. Attending justices on trial in one or more cases, per hour. 0 25
8. Mileage travelled to attend trial (when public conveyance can be taken only reasonable disbursements to be allowed) one way per mile. 0 10
9. Serving warrant of distress and returning same. 1 00
10. Advertising under warrant of distress. 1 00
11. Travelling to make distress or to search for goods to make distress, when no goods are found (one way) per mile. 0 10
12. Appraisements, whether by one appraiser or more, 2 cents in the dollar on the value of the goods.
13. Commission on sale and delivery of goods, 5 cents in the dollar on the net produce of the goods. 52 V. c. 45, s. 2 & Sch.

Witnesses' Fees.

1. Each day attending trial. 0 75
2. Mileage travelled to attend trial (one way) per mile. 0 10

872. Whenever a conviction adjudges a pecuniary penalty or compensation to be paid, or an order requires the payment of a sum of money, whether the Act or law authorizing such conviction or order does or does not provide a mode of raising or levying the penalty, compensation or sum of money, or of enforcing the payment thereof, the justice by his conviction, or order after adjudging payment of such penalty, compensation or sum of money, with or without costs, may order and adjudge—

(a) that in default of payment thereof forthwith, or within a limited time, such penalty, compensation or sum of money shall be levied by distress and

sale of the goods and chattels of the defendant, and, if sufficient distress cannot be found, that the defendant be imprisoned in the common gaol or other prison of the territorial division for which the justice is then acting, in the manner and for the time directed by the Act or law authorizing such conviction or order or by this Act, or for any period not exceeding three months, if the Act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless such penalty, compensation or sum of money and costs, if the conviction or order is made with costs, and the expenses of the distress and of conveying the defendant to gaol are sooner paid; or

(b) that in default of payment of the said penalty, compensation or sum of money, and costs if any forthwith or within a limited time, the defendant be imprisoned in the common gaol or other prison of the said territorial division in the manner and for the time mentioned in the said Act or law, or for any period not exceeding three months if the Act or law authorizing the conviction or order does not specify imprisonment, or does not specify any term of imprisonment, unless the said sums with the like costs and expenses are sooner paid.

2. The justice making the conviction or order mentioned in the paragraph lettered (a) of sub-section one of this section may issue a warrant of distress in the form DDD or EEE, as the case requires; and in the case of a conviction or order under the paragraph lettered (b) of the said sub-section, a warrant in one of the forms FFF or GGG may issue;

(a) if a warrant of distress is issued and the constable or peace officer charged with the execution thereof returns (form III) that he can find no goods or chattels whereon to levy thereunder, the justice may issue a warrant of commitment in the form JJJ.

3. Where by virtue of an Act or law so authorizing the justice by his conviction adjudges against the defendant payment of a penalty or compensation, and also imprisonment, as punishment for an offence, he may, if he thinks fit, order that the imprisonment in default of distress or of payment, as provided for in this section, shall commence at the expiration of the imprisonment awarded as a punishment for the offence.

4. The like proceeding may be had upon any conviction or order made as provided by this section as if the Act or law authorizing the same had expressly provided for a conviction or order in the above terms. R. S. C. c. 178, ss. 62, 66, 67 & 68.

DDD.—(Section 872.)

WARRANT OF DISTRESS UPON A CONVICTION FOR A
PENALTY.

Canada,)
Province of)
County of)

To all or any of the constables and other peace officers in the
said county of

Whereas A. B., late of , (labourer), was on this day (or on last past) duly convicted before , a justice of the peace, in and for the said county of , for that (*stating the offence, as in the conviction*), and it was thereby adjudged that the said A. B. should, for such his offence, forfeit and pay (*&c., as in the conviction*), and should also pay to the said C. D. the sum of , for his costs in that behalf; and it was thereby ordered that if the said several sums were not paid (forthwith) the same should be levied by distress and sale of the goods and chattels of the said A. B., and it was thereby also adjudged that the said A. B., in default of sufficient distress, should be imprisoned in the common gaol of the said county, at , in the said county of (and there kept at hard labour) for the space of , unless the said several sums and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol were sooner paid; * And whereas the said A. B., being so convicted as aforesaid, and being (now) required to pay the said sums of

and has not paid the same or any part thereof, but therein has made default: These are, therefore, to command you, in Her Majesty's name forthwith to make distress of the goods and chattels of the said A. B.; and if within days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me, the convicting justice (or one of the convicting justices), that I may pay and apply the same as by law directed, and may render the overplus, if any, on demand, to the said A. B.; and if no such distress is found, then to certify the same unto me, that such further proceedings may be had thereon as to law appertain.

Given under my hand and seal, this day of , in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (Name of county).

EEE.—(Section 872.)

WARRANT OF DISTRESS UPON AN ORDER FOR THE
PAYMENT OF MONEY.

Canada, }
Province of }
County of }

To all or any of the peace officers in the said county of ,

Whereas on , last past, a complaint was made before
 , a justice of the peace in and for the said county, for
that (*etc., as in the order*), and afterwards, to wit, on ,
at , the said parties appeared before (*as in the*
order), and thereupon the matter of the said complaint having
been considered, the said A. B. was adjudged to pay to the said
C. D. the sum of , on or before then next, and
also to pay to the said C. D. the sum of , for his costs in
that behalf; and it was ordered that if the said several sums
were not paid on or before the said then next, the same
should be levied by distress and sale of the goods and chattels of
the said A. B.; and it was adjudged that in default of sufficient
distress in that behalf, the said A. B. should be imprisoned in
the common gaol of the said county, at . in the said
county of (and there kept at hard labour) for the term of
 , unless the said several sums and all costs and charges
of the distress (and of the commitment and conveying of the said
A. B. to the said common gaol) were sooner paid; * And whereas
the time in and by the said order appointed for the payment of
the said several sums of , and has elapsed, but
the said A. B. has not paid the same, or any part thereof, but
therein has made default: These are, therefore, to command
you, in Her Majesty's name, forthwith to make distress of the
goods and chattels of the said A. B.; and if within the space of
days after the making of such distress, the said last
mentioned sums, together with the reasonable charges of taking
and keeping the said distress, are not paid, then to sell the said
goods and chattels so by you distrained, and to pay the money
arising from such sale unto me (*or some other of the convicting jus-*
tices, as the case may be), that I (*or he*) may pay or apply the
same as by law directed, and may render the overplus, if any, on
demand to the said A. B.; and if no such distress can be found,

then to certify the same unto me, to the end that such proceedings may be had therein, as to law appertain.

Given under my hand and seal, this day of
in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (Name of county.)

FFF.—(Section 872.)

WARRANT OF COMMITMENT UPON A CONVICTION FOR A
PENALTY IN THE FIRST INSTANCE.

Canada,
Province of },
County of . }

To all or any of the constables and other peace officers in the
said county of , and to the keeper of the common
gaol of the said county of , at in the said
county of .

Whereas A. B., late of , (labourer), was on this day
convicted before the undersigned , a justice of the
peace in and for the said county, for that (*stating the offence, as in
the conviction*), and it was thereby adjudged that the said A. B.,
for his offence, should forfeit and pay the sum of
(*etc., as in the conviction*), and should pay to the said C. D. the
sum of , for his costs in that behalf; and it was thereby
further adjudged that if the said several sums were not paid
(forthwith) the said A. B. should be imprisoned in the common
gaol of the county, at , in the said county of
(and there kept at hard labour) for the term of , unless
the said several sums (and the costs and charges of conveying
the said A. B. to the said common gaol) were sooner paid; And
whereas the time in and by the said conviction appointed for the
payment of the said several sums has elapsed, but the said A. B.
has not paid the same, or any part thereof, but therein has made
default; These are, therefore, to command you, the said peace
officers, or any one of you, to take the said A. B., and him safely
to convey to the common gaol at aforesaid, and there to
deliver him to the said keeper thereof, together with this pre-
cept: And I do hereby command you, the said keeper of the

said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of , unless the said several sums (and costs and charges of carrying him to the said common gaol, amounting to the further sum of), are sooner paid unto you, the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this day of ,
in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (Name of county.)

G.G.G.—(Section 872.)

WARRANT OF COMMITMENT ON AN ORDER IN THE FIRST
INSTANCE.

Canada,)
Province of ,)
County of .)

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the county of , at , in the said county of .

Whereas, on last past, complaint was made before the undersigned , a justice of the peace in and for the said county of , for that (etc., as in the order), and afterwards, to wit, on the day of , at A. B. and C. D. appeared before me, the said justice (or as it is in the order), and thereupon having considered the matter of the complaint, I adjudged the said A. B. to pay the said C. D. the sum of , on or before the day of then next, and also to pay to the said C. D. the sum of , for his costs in that behalf; and I also thereby adjudged that if the said several sums were not paid on or before the day of , then next, the said A. B. should be imprisoned in the common gaol of the county of , at , in the said county of (and there be kept at hard labour) for the term of , unless the said several sums (and the costs and charges of conveying the said A. B. to the said common

gaol *as the case may be*) were sooner paid; And whereas the time in and by the said order appointed for the payment of the said several sums of money has elapsed, but the said A. B. has not paid the same, or any part thereof, but therein has made default; These are, therefore, to command you, the said peace officers, or any of you, to take the said A. B. and him safely to convey to the said common gaol, at _____ aforesaid, and there to deliver him to the keeper thereof, together with this precept; And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of _____, unless the said several sums (and the costs and charges of conveying him to the said common gaol, amounting to the further sum of _____), are sooner paid unto you the said keeper; and for your so doing, this shall be your sufficient warrant.

Given under my hand and seal, this _____ day of _____, in the year _____, at _____, in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county.*)

III.—(Section 872.)

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, W. T., constable, of _____, in the county of _____, hereby certify to J. S., Esquire, a justice of the peace in and for the county of _____, that by virtue of this warrant I have made diligent search for the goods and chattels of the within mentioned A. B., and that I can find no sufficient goods and chattels of the said A. B. whereon to levy the sums within mentioned.

Witness my hand, this _____ day of _____, one thousand eight hundred and _____.

W. T.

JJJ.—(Section 872.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada, }
Province of }
County of }

To all or any of the constables and other peace officers in the county of , and to the keeper of the common gaol of the said county of , at , in the said county.

Whereas (i.e., as in either of the foregoing distress warrants, DDD or EEE, to the asterisk, * and then thus): And whereas, afterwards on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the peace officers of the county of , commanding them, or any of them, to levy the said sums of and by distress and sale of the goods and chattels of the said A. B.: And whereas it appears to me, as well by the return of the said warrant of distress, by the peace officer who had the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said A. B., but that no sufficient distress whereon to levy the sums above mentioned could be found: These are, therefore, to command you, the said peace officers, or any one of you, to take the said A. B., and him safely to convey to the common gaol at , aforesaid, and there deliver him to the said keeper, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A. B. into your custody, in the said common gaol, there to imprison him (and keep him at hard labour) for the term , unless the said several sums and all the costs and charges of the said distress (and of the commitment and conveying of the said A. B. to the said common gaol) amounting to the further sum of , are sooner paid unto you, the said keeper: and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of ,
in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (Name of county.)

873. When any information or complaint is dismissed with costs the justice may issue a warrant of distress on the goods and chattels of the prosecutor or complainant, in the form KKK, for the amount of such costs; and, in default of distress, a warrant of commitment in the form LLL may issue: Provided that the term of imprisonment in such case shall not exceed one month. R. S. C. c. 178, s. 70.

KKK.—(Section 873.)

WARRANT OF DISTRESS FOR COSTS UPON AN ORDER FOR
DISMISSAL OF AN INFORMATION OR COMPLAINT.

Canada, }
Province of }
District of }

To all or any of the constables and other peace officers in the
said county of

Whereas on last past, information was laid (or complaint was made) before , a justice of the peace in and for the said county of , for that (*&c.*, as in the order of dismissal) and afterwards, to wit, on , at , both parties appearing before , in order that (I) should hear and determine the same, and the several proofs adduced to (me) in that behalf, being by (me) duly heard and considered, and it manifestly appearing to (me) that the said information (or complaint) was not proved, (I) therefore dismissed the same and adjudged that the said C. D. should pay to the said A. B. the sum of , for his costs incurred by him in his defence in that behalf; and (I) ordered that if the said sum for costs was not paid (forthwith) the same should be levied on the goods and chattels of the said C. D., and (I) adjudged that in default of sufficient distress in that behalf the said C. D. should be imprisoned in the common gaol of the said county of , at , in the said county of , (and there kept at hard labour) for the space of , unless the said sum for costs, and all costs and charges of the said distress, and of the commitment and conveying of the said A. B. to the said common gaol, were sooner paid; *And whereas the said C. D. being now required to pay to the said A. B. the said sum for costs, has not paid the same, or any part thereof, but therein has made default: These are, therefore, to command you, in

Her Majesty's name, forthwith to make distress of the goods and chattels of the said C. D., and if within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to *(me)* that (I), may pay and apply the same as by law directed, and may render the overplus (if any) on demand to the said C. D., and if no distress can be found, then to certify the same unto *me* (or to any other justice of the peace for the same county), that such proceedings may be had therein as to law appertain.

Given under my hand and seal, this day of ,
in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of county.*)

LLL.—(*Section 873.*)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS.

Canada,)
Province of ,
County of)

To all or any of the constables and other peace officers in the said county of , and to the keeper of the common gaol of the said county of , at , in the said county of

Whereas (*&c., as in form KKK. to the asterisk, * and then thus*): And whereas afterwards, on the day of , in the year aforesaid, I, the said justice, issued a warrant to all or any of the peace officers of the said county, commanding them, or any one of them, to levy the said sum of , for costs, by distress and sale of the goods and chattels of the said C. D.: And whereas it appears to me, as well by the return to the said warrant of distress of the peace officer charged with the execution of the same, as otherwise, that the said peace officer has made diligent search for the goods and chattels of the said C. D., but that no sufficient distress whereon to levy the sum above mentioned could be found: These are, therefore, to com-

mand you, the said peace officers, or any one of you, to take the said C. D., and him safely convey to the common gaol of the said county, at _____ aforesaid, and there deliver him to the keeper thereof, together with this precept; And I hereby command you, the said keeper of the said common gaol, to receive the said C. D. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of _____, unless the said sum, and all the costs and charges of the said distress (and of the commitment and conveying of the said C. D. to the said common gaol, amounting to the further sum of _____), are sooner paid unto you the said keeper; and for you so doing, this shall be your sufficient warrant.

Given under my hand and seal, this _____ day of _____, in the year _____, at _____, in the county aforesaid.

J. S., [SEAL.]

J. P., (*Name of County.*)

874. If after delivery of any warrant of distress issued under this part to the constable or constables to whom the same has been directed to be executed, sufficient distress cannot be found within the limits of the jurisdiction of the justice granting the warrant, then upon proof being made upon oath or affirmation of the handwriting of the justice granting the warrant, before any justice of any other territorial division, such justice shall thereupon make an endorsement on the warrant, signed with his hand, authorizing the execution of the warrant within the limits of his jurisdiction, by virtue of which warrant and endorsement the penalty or sum and costs, or so much thereof as has not been before levied or paid, shall be levied by the person bringing the warrant, or by the person or persons to whom the warrant was originally directed, or by any constable or other peace officer of the last mentioned territorial division, by distress and sale of the goods and chattels of the defendant therein.

2. Such endorsements shall be in the form HHH in schedule one to this Act. R. S. C. c. 178, s. 63.

HHH.—(*Section 874.*)

ENDORSEMENT IN BACKING A WARRANT OF DISTRESS.

Canada,)
Province of)
County of)

Whereas proof upon oath has this day been made before me _____, a justice of the peace in and for the said county, that

the name of J. S. to the within warrant subscribed is of the handwriting of the justice of the peace within mentioned, I do therefore authorize W. T., who brings me this warrant, and all other persons to whom this warrant was originally directed, or by whom the same may be lawfully executed, and also all peace officers in the said county of _____, to execute the same within the said county.

Given under my hand, this _____ day of _____, one thousand eight hundred and _____

O. K.,

J. P., (*Name of county.*)

875. Whenever it appears to any justice that the issuing of a distress warrant would be ruinous to the defendant and his family, or whenever it appears to the justice, by the confession of the defendant or otherwise, that he has no goods and chattels whereon to levy such distress, then the justice, if he deems it fit, instead of issuing a warrant of distress, may commit the defendant to the common gaol or other prison in the territorial division, there to be imprisoned, with or without hard labour, for the time and in the manner he would have been committed in case such warrant of distress had issued and no sufficient distress had been found. R. S. C. c. 178, s. 64.

876. Whenever a justice issues a warrant of distress as hereinbefore provided, he may suffer the defendant to go at large, or verbally, or by a written warrant in that behalf, may order the defendant to be kept and detained in safe custody, until return has been made to the warrant of distress unless the defendant gives sufficient security, by recognizance or otherwise, to the satisfaction of the justice, for his appearance, at the time and place appointed for the return of the warrant of distress, before him or before such other justice for the same territorial division as shall then be there. R. S. C. c. 178, s. 65.

877. Whenever a justice, upon any information or complaint, adjudges the defendant to be imprisoned, and the defendant is then in prison undergoing imprisonment upon conviction for any other offence, the warrant of commitment for the subsequent offence shall be forthwith delivered to the gaoler or other officer to whom it is directed; and the justice who issued the same, if he thinks fit, may award and order therein that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment to which the defendant was previously sentenced. R. S. C. c. 178, s. 69.

878. Whenever a defendant gives security by or is discharged upon recognizance and does not afterwards appear at the time and place mentioned in the recognizance, the justice who took the recognizance, or any justice who is then present, having certified upon the back of the recognizance the non-appearance of the defendant, may transmit such recognizance to the proper officer in the province appointed by law to receive the same, to be

proceeded upon in like manner as other recognizances; and such certificate shall be *prima facie* evidence of the non-appearance of the said defendant.

2. Such certificate shall be in the form MMM in schedule one to this Act. The proper officer to whom the recognizance and certificate of default are to be transmitted, in the province of Ontario, shall be the clerk of the peace of the county for which such justice is acting, except in the district of Nipissing as to which district the proper officer shall be the clerk of the peace for the county of Renfrew; and the Court of General Sessions of the Peace for such county shall, at its then next sitting, order all such recognizances to be forfeited and estreated, and the same shall be enforced and collected in the same manner and subject to the same conditions as any fines, forfeitures or amercements imposed by or forfeited before such court; and in the other provinces of Canada, the proper officer to whom any such recognizance and certificate shall be transmitted, shall be the officer to whom like recognizances have been heretofore accustomed to be transmitted under the law in force before the passing of this Act; and such recognizances shall be enforced and collected in the same manner as like recognizances have heretofore been enforced and collected. R. S. C. c. 173, ss. 71 & 72.

MMM.—(Section 878.)

CERTIFICATE OF NON-APPEARANCE TO BE ENDORSED ON
THE DEFENDANT'S RECOGNIZANCE.

I hereby certify that the said A. B. has not appeared at the time and place in the said condition mentioned, but therein has made default, by reason whereof the within written recognizance is forfeited.

J. S., [SEAL.]

J. P., (Name of county.)

879. Unless it is otherwise provided in any special Act under which a conviction takes place or an order is made by a justice for the payment of money or dismissing an information or complaint, any person who thinks himself aggrieved by any such conviction or order, the prosecutor or complainant, as well as the defendant, may appeal, in the province of Ontario, to the Court of General Sessions of the Peace; in the province of Quebec, to the Court of Queen's Bench, Crown side; in the provinces of Nova Scotia, New Brunswick and Manitoba, to the county court of the district or county where the cause of the information or complaint arose; in the province of Prince Edward Island, to the Supreme Court; in the province of British Columbia, to the county or district court, at the sitting thereof which shall be held nearest to the place where the cause of the information or complaint arose; and in the North-west Territories, to a judge of the Supreme Court of the said territories, sitting without a jury, at the place where the cause of the information or complaint arose, or the nearest place thereto where a court is appointed to be held.

2. In the district of Nipissing such person may appeal to the Court of General Sessions of the Peace for the county of Renfrew. 51 V. c. 45, s. 7. 52 V. c. 45, s. 6.

Sub-section 2 extended by the repealed clause to the district of Muskoka and others.

880. Every right of appeal shall, unless it is otherwise provided in any special Act, be subject to the conditions following, that is to say :—

(a) If the conviction or order is made more than fourteen days before the sittings of the court to which the appeal is given, such appeal shall be made to the then next sittings of such court; but if the conviction or order is made within fourteen days of the sittings of such court, then to the second sittings next after such conviction or order;

(b) The appellant shall give to the respondent, or to the justice who tried the case for him, a notice in writing, in the form NNN in schedule one to this Act, of such appeal, within ten days after such conviction or order;

(c) The appellant, *if the appeal is from a conviction adjudging imprisonment*, shall either remain in custody until the holding of the court to which the appeal is given, or shall enter into a recognizance in the form OOO in the said schedule with two sufficient sureties, before a justice, conditioned personally to appear at the said court, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as are awarded by the court; or, if the appeal is against any conviction or order, whereby only a penalty or sum of money is adjudged to be paid, the appellant (although the order directs imprisonment in default of payment), instead of remaining in custody as aforesaid, or giving such recognizance as aforesaid, may deposit with the justice convicting or making the order such sum of money as such justice deems sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal; and upon such recognizance being given, or such deposit being made, the justice before whom such recognizance is entered into, or deposit made, shall liberate such person, if in custody;

(d) In case of an appeal from the order of a justice, pursuant to section five hundred and seventy-one, for the restoration of gold or gold-bearing quartz, or silver or silver ore, the appellant shall give security by recognizance to the value of the said property to prosecute his appeal at the next sittings of the court and to pay such costs as are awarded against him;

(e) The court to which such appeal is made shall thereupon hear and determine the matter of appeal and make such order therein, with or without costs to either party, including costs of the court below, as seems meet to the court,—and, in case of the dismissal of an appeal by the defendant and the affirmance of the conviction or order, shall order and adjudge the appellant to be punished according to the conviction or to pay the amount adjudged by the said order, and to pay such costs as are awarded,—and shall, if necessary, issue process for enforcing the judgment of the court; and whenever, after any such deposit has been made as aforesaid, the conviction or order is affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction or order, and the costs of the appeal, to be paid out of the money deposited, and the residue, if any, to be repaid to the appellant; and whenever, after any such deposit, the conviction or order is quashed, the court shall order the money to be repaid to the appellant;

(f) The said court shall have power, if necessary, from time to time, by order endorsed on the conviction or order, to adjourn the hearing of the appeal from one sittings to another, or others, of the said court;

(g) Whenever any conviction or order is quashed on appeal, as aforesaid, the clerk of the peace or other proper officer shall forthwith endorse on the conviction or order a memorandum that the same has been quashed; and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall, when certified under the hand of the clerk of the peace, or of the proper officer having the custody of the same, be sufficient evidence, in all courts and for all purposes, that the conviction or order has been quashed. 51 V. c. 45, s. 8. 53 V. c. 37, s. 24.

NNN.—(Section 880.).

NOTICE OF APPEAL AGAINST A CONVICTION OR ORDER.

To C. D., of _____, and _____, (the names and additions of the parties to whom the notice of appeal is required to be given.)

Take notice, that I, the undersigned, A. B., of _____, intend to enter and prosecute an appeal at the next General Sessions of the Peace (or other court, as the case may be), to be holden at _____, in and for the county of _____, against a certain conviction (or order) bearing date on or about the day of _____, instant, and made by (you) J. S., Esquire, a justice of the peace in and for the said county of _____, whereby I, the said A. B. was convicted of having (or was ordered) to pay _____, (here state the offence as in the conviction, information, or summons, or the amount adjudged to be paid, as in the order, as correctly as possible.)

Dated at _____, this _____ day of _____, one thousand eight hundred and _____.

A. B.

MEMORANDUM.—If this notice is given by several defendants, or by an attorney, it may be adapted to the case.

OOO.—(Section 880.)

FORM OF RECOGNIZANCE TO TRY THE APPEAL.

Canada, }
Province of }
County of }

Be it remembered that on _____, A.B., of _____, (labourer),
and L. M., of _____, (grocer), and N. O., of _____, (yeoman),

personally came before the undersigned , a justice of the peace in and for the said county of , and severally acknowledged themselves to owe to our Sovereign Lady the Queen, the several sums following, that is to say, the said A.B. the sum of , and the said L.M. and N.O. the sum of , each, of good and lawful money of Canada, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her heirs and successors, if he the said A. B. fails in the condition endorsed (or hereunder written).

Taken and acknowledged the day and year first above mentioned at , before me.

J. S.,

J. P. (Name of county).

The condition of the within (or the above) written recognizance is such that if the said A.B. personally appears at the (next) General Sessions of the Peace (or other court discharging the functions of the Court of General Sessions, as the case may be), to be holden at , on the day of , next, in and for the said county of , and tries an appeal against a certain conviction, bearing date the day of , (instant), and made by (me) the said justice, whereby he, the said A. B., was convicted, for that he, the said A.B., did, on the day of , at , in the said county of , (here set out the offence as stated in the conviction); and also abides by the judgment of the court upon such appeal and pays such costs as are by the court awarded, then the said recognizance to be void, otherwise to remain in full force and virtue.

FORM OF NOTICE OF SUCH RECOGNIZANCE TO BE GIVEN TO THE APPELLANT AND HIS SURETIES.

Take notice, that you, A. B., are bound in the sum of , and you L. M. and N. O. in the sum of , each, that you the said A. B. will personally appear at the next General Sessions of the Peace to be holden at , in and for the said county of , and try an appeal against a conviction (or order) dated the day of , (instant) whereby you A. B. were convicted of (or ordered, &c.), (stating offence or the subject

of the order shortly), and abide by the judgment of the court upon such appeal and pay such costs as are by the court awarded, and unless you the said A. B. personally appear and try such appeal and abide by such judgment and pay such costs accordingly, the recognizance entered into by you will forthwith be levied on you and each of you.

Dated at _____, this _____ day of _____, one thousand eight hundred and _____.

881. When an appeal against any summary conviction or decision has been lodged in due form, and in compliance with the requirements of this part the court appealed to shall try, and shall be the absolute judge, as well of the facts as of the law, in respect to such conviction or decision; and any of the parties to the appeal may call witnesses and adduce evidence, whether such witnesses were called or evidence adduced at the hearing before the justice or not, either as to the credibility of any witness, or as to any other fact material to the inquiry; but any evidence taken before the justice at the hearing below, signed by the witness giving the same and certified by the justice, may be read on such appeal, and shall have the like force and effect as if the witness was there examined: Provided, that the court appealed to is satisfied, by affidavit or otherwise, that the personal presence of the witness cannot be obtained by any reasonable efforts. 53 V. c. 37, s. 25.

882. No judgment shall be given in favour of the appellant if the appeal is based on an objection to any information, complaint or summons, or to any warrant to apprehend a defendant issued upon any such information, complaint or summons, for any alleged defect therein, in substance or in form, or for any variance between such information, complaint, summons or warrant and the evidence adduced in support thereof at the hearing of such information or complaint, unless it is proved before the court hearing the appeal that such objection was made before the justice before whom the case was tried and by whom such conviction, judgment or decision was given, or unless it is proved that notwithstanding it was shown to such justice that by such variance the person summoned and appearing or apprehended had been deceived or misled, such justice refused to adjourn the hearing of the case to some further day, as herein provided. R. S. C. c. 178, s. 79.

883. In every case of appeal from any summary conviction or order had or made before any justice, the court to which such appeal is made shall, notwithstanding any defect in such conviction or order, and notwithstanding that the punishment imposed or the order made may be in excess of that which might lawfully have been imposed or made, hear and determine the charge or complaint on which such conviction or order has been had or made, upon the merits, and may confirm, reverse or modify the decision of such justice, or may make such other conviction or order in the matter as the court thinks just, and may by such order exercise any power which the justice whose decision is appealed from might have exercised, and such conviction or order shall have the same effect and may be enforced in the same manner as if it had been made

by such justice. The court may also make such order as to costs to be paid by either party as it thinks fit.

2. Any conviction or order made by the court on appeal may also be enforced by process of the court itself. 53 V. c. 37, s. 26.

884. The court to which an appeal is made, upon proof of notice of the appeal to such court having been given to the person entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if such appeal has not been abandoned according to law, at the same sittings for which such notice was given, order to the party or parties receiving the same such costs and charges as are thought reasonable and just by the court, to be paid by the party or parties giving such notice; and such costs shall be recoverable in the manner provided by this Act for the recovery of costs upon an appeal against an order or conviction. R. S. C. c. 178, s. 81.

885. If an appeal against a conviction or order is decided in favour of the respondents, the justice who made the conviction or order, or any other justice for the same territorial division, may issue the warrant of distress or commitment for execution of the same, as if no appeal had been brought. R. S. C. c. 178, s. 82.

886. No conviction or order affirmed, or affirmed and amended, in appeal, shall be quashed for want of form, or be removed by *certiorari* into any superior court, and no warrant or commitment shall be held void by reason of any defect therein, provided it is therein alleged that the defendant has been convicted, and there is a good and valid conviction to sustain the same. R. S. C. c. 178, s. 83.

887. No writ of *certiorari* shall be allowed to remove any conviction or order had or made before any justice of the peace if the defendant has appealed from such conviction or order to any court to which an appeal from such conviction or order is authorized by law, or shall be allowed to remove any conviction or order made upon such appeal. R. S. C. c. 178, s. 84.

888. Every justice before whom any person is summarily tried, shall transmit the conviction or order to the court to which the appeal is herein given, in and for the district, county or place wherein the offence is alleged to have been committed, before the time when an appeal from such conviction or order may be heard, there to be kept by the proper officer among the records of the court; and if such conviction or order has been appealed against, and a deposit of money made, such justice shall return the deposit into the said court; and the conviction or order shall be presumed not to have been appealed against, until the contrary is shown.

2. Upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence. R. S. C. c. 178, s. 86. 51 V. c. 45, s. 2.

889. No conviction or order made by any justice of the peace and no warrant for enforcing the same, shall, on being removed by *certiorari* be held invalid for any irregularity, informality or insufficiency therein, provided that

the court or judge before which or whom the question is raised is, upon perusal of the depositions, satisfied that an offence of the nature described in the conviction, order or warrant, has been committed, over which such justice has jurisdiction, and that the punishment imposed is not in excess of that which might have been lawfully imposed for the said offence; and any statement which, under this Act or otherwise, would be sufficient if contained in a conviction, shall also be sufficient if contained in an information, summons, order or warrant: Provided that the court or judge, where so satisfied as aforesaid, shall, even if the punishment imposed or the order made is in excess of that which might lawfully have been imposed or made, have the like powers in all respects to deal with the case as seems just as are by section eight hundred and eighty-three conferred upon the court to which an appeal is taken under the provisions of section eight hundred and seventy-nine. R. S. C. c. 178 s. 87. 53 V. c. 37, s. 27.

890. The following matters amongst others shall be held to be within the provisions of the next preceding section:—

(a) The statement of the adjudication, or of any other matter or thing, in the past tense instead of in the present;

(b) The punishment imposed being less than the punishment by law assigned to the offence stated in the conviction or order, or to the offence which appears by the depositions to have been committed;

(c) The omission to negative circumstances, the existence of which would make the act complained of lawful, whether such circumstances are stated by way of exception or otherwise in the section under which the offence is laid, or are stated in another section.

2. But nothing in this section contained shall be construed to restrict the generality of the wording of the next preceding section. R. S. C. c. 178, s. 88.

891. If an application is made to quash a conviction or order made by a justice, on the ground that such justice has exceeded his jurisdiction, the court or judge to which or whom the application is made, may, as a condition of quashing the same, if the court or judge thinks fit so to do, provide that no action shall be brought against the justice who made the conviction, or against any officer acting under any warrant issued to enforce such conviction or order. R. S. C. c. 178, s. 89.

892. The court having authority to quash any conviction, order or other proceeding by or before a justice may prescribe by general order that no motion to quash any conviction, order or other proceeding by or before a justice and brought before such court by *certiorari*, shall be entertained unless the defendant is shown to have entered into a recognizance with one or more sufficient sureties, before a justice or justices of the county or place within which such conviction or order has been made, or before a judge or other officer, as may be prescribed by such general order, or to have made a deposit to be prescribed in like manner, with a condition to prosecute such writ of *certiorari* at his own costs and charges, with effect, without any wilful or affected delay, and, if ordered so to do, to pay the person in whose favour the conviction, order or other proceeding is affirmed, his full costs and charges to be taxed

according to the course of the court where such conviction, order or proceeding is affirmed. R. S. C. c. 178, s. 90.

893. The second section of the Act of the Parliament of the United Kingdom, passed in the fifth year of the reign of His Majesty King George the Second, and chaptered nineteen, shall no longer apply to any conviction, order or other proceeding by or before a justice in Canada, but the next preceding section of this Act shall be substituted therefor, and the like proceedings may be had for enforcing the condition of a recognizance taken under the said section as might be had for enforcing the condition of a recognizance taken under the said Act of the Parliament of the United Kingdom. R. S. C. c. 178, s. 91.

See R. v. Nunn, 10 P. R. Ont., 895, and R. v. Swalwell, 12 O. R. 391, and preceding section.

894. No order, conviction or other proceeding shall be quashed or set aside, and no defendant shall be discharged, by reason of any objection that evidence has not been given of a proclamation or order of the Governor in Council, or of any rules, regulations, or by-laws made by the Governor in Council in pursuance of a statute of Canada or of the publication of such proclamation, order, rules, regulations or by-laws in the *Canada Gazette*; but such proclamation, order, rules, regulations and by-laws and the publication thereof shall be judicially noticed. 51 V. c. 45, s. 10.

895. If a motion or rule to quash a conviction, order or other proceeding is refused or discharged, it shall not be necessary to issue a writ of *procedendo*, but the order of the court refusing or discharging the application shall be a sufficient authority for the registrar or other officer of the court forthwith to return the conviction, order and proceedings to the court or justice from which or whom they were removed, and for proceedings to be taken thereon for the enforcement thereof, as if a *procedendo* had issued, which shall forthwith be done. R. S. C. c. 178, s. 93.

896. Whenever it appears by the conviction that the defendant has appeared and pleaded, and the merits have been tried, and the defendant has not appealed against the conviction, where an appeal is allowed, or if appealed against, the conviction has been affirmed, such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever, but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case. R. S. C. c. 178, s. 94.

897. If upon any appeal the court trying the appeal orders either party to pay costs, the order shall direct the costs to be paid to the clerk of the peace or other proper officer of the court, to be paid over by him to the person entitled to the same, and shall state within what time the costs shall be paid. R. S. C. c. 178, s. 95.

898. If such costs are not paid within the time so limited, and the person ordered to pay the same has not been bound by any recognizance conditioned to pay such costs, the clerk of the peace or his deputy, on application of the person entitled to the costs, or of any person on his behalf, and on pay-

ment of any fee to which he is entitled, shall grant to the person so applying, a certificate that the costs have not been paid; and upon production of the certificate to any justice in and for the same territorial division, such justice may enforce the payment of the costs by warrant of distress in manner aforesaid, and in default of distress may commit the person against whom the warrant has issued in manner hereinbefore mentioned, for any term not exceeding *one month*, unless the amount of the costs and all costs and charges of the distress and also the costs of the commitment and conveying of the party to prison, if the justice thinks fit so to order (the amount thereof being ascertained and stated in the commitment), are sooner paid. The said certificate shall be in the form PPP and the warrants of distress and commitment in the forms QQQ and RRR respectively in schedule one to this Act. R. S. C. c. 178, s. 96.

PPP.—(Section 898.)

CERTIFICATE OF CLERK OF THE PEACE THAT THE COSTS OF
AN APPEAL ARE NOT PAID.

Office of the clerk of the peace for the county of

Title of the Appeal.

I hereby certify that at a Court of General Sessions of the Peace,, (or other court discharging the functions of the Court of General Sessions, as the case may be), holden at , in and for the said county, on last past, an appeal by A. B. against a conviction (or order) of J. S. Esquire, a justice of the peace in and for the said county, came on to be tried, and was there heard and determined, and the said Court of General Sessions (or other court, as the case may be) thereupon ordered that the said conviction (or order), should be confirmed (or quashed), and that the said (appellant) should pay to the said (respondent) the sum of , for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the clerk of the peace for the said county, on or before the day of (instant), to be by him handed over to the said (respondent), and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the said order.

Dated at , this day of , one thousand eight hundred and

G. H.,
Clerk of the Peace.

QQQ.—(Section 898.)

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST
A CONVICTION OR ORDER.

Canada,
Province of },
County of },

To all or any of the constables and other peace officers in the
said county of

Whereas (&c., as in the warrants of distress, DDD or EEF.,
and to the end of the statement of the conviction or order, and then
thus): And whereas the said A. B. appealed to the Court of
General Sessions of the Peace (or other court discharging the
functions of the Court of General Sessions, as the case may be), for
the said county, against the said conviction or order, in which
appeal the said A. B. was the appellant, and the said C. D. (or
J. S., Esquire, the justice of the peace who made the said con-
viction or order) was the respondent, and which said appeal
came on to be tried and was heard and determined at the last
General Sessions of the Peace (or other court, as the case may be)
for the said county, holden at , on , and the said
court thereupon ordered that the said conviction (or order)
should be confirmed (or quashed) and that the said (appellant)
should pay to the said (respondent) the sum of for his
costs incurred by him in the said appeal, which said sum was to
be paid to the clerk of the peace for the said county, on or be-
fore the day of , one thousand eight hundred
and , to be by him handed over to the said C. D.; and
whereas the clerk of the peace of the said county has, on the
day of (instant), duly certified that the said
sum for costs had not been paid:* These are, therefore, to
command you, in Her Majesty's name, forthwith to make dis-
tress of the goods and chattels of the said A. B., and if, within
the term of days next after the making of such distress, the
said last mentioned sum, together with the reasonable charges
of taking and keeping the said distress, are not paid, then
to sell the said goods and chattels so by you distrained, and to
pay the money arising from such sale to the clerk of the peace
for the said county of , that he may pay and apply the
same as by law directed; and if no such distress can be found,

then to certify the same unto me or any other justice of the peace for the same county that such proceeding (proceedings) may be had therein as to law appertain.

Given under my hand and seal, this day of
in the year , at , in the county aforesaid.

O. K., [SEAL.]

J. P., (*Name of county.*)

RRR.—(Section 898.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN
THE LAST CASE.

Canada, }
Province of }
County of }

To all or any of the constables and other peace officers in the
said county of

Whereas (*etc., as in form QQQ, to the asterisk * and then thus*):
And whereas, afterwards, on the day of , in the
year aforesaid, I, the undersigned, issued a warrant to all or any
of the peace officers in the said county of , commanding
them, or any of them, to levy the said sum of , for costs,
by distress and sale of the goods and chattels of the said A. B.;
And whereas it appears to me, as well by the return to the said
warrant of distress of the peace officer who was charged with the
execution of the same, as otherwise, that the said peace officer
has made diligent search for the goods and chattels of the said
A. B., but that no sufficient distress whereon to levy the said
sum above mentioned could be found: These are, therefore, to
command you, the said peace officer, or any one of you, to take
the said A. B., and him safely to convey to the common gaol of
the said county of , at aforesaid, and there
deliver him to the said keeper thereof, together with this
precept: And I do hereby command you, the said keeper of the
said common gaol, to receive the said A. B. into your custody in
the said common gaol, there to imprison him (and keep him at
hard labour) for the term of , unless the said sum and
all costs and charges of the said distress (and for the commit-
ment and conveying of the said A. B. to the said common gaol,

amounting to the further sum of), are sooner paid unto you, the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of
in the year , at , in the county aforesaid.

O. K., [SEAL]

J. P., (Name of county.)

899. *An appellant may abandon his appeal by giving to the opposite party notice in writing of his intention six clear days before the sitting of the court appealed to, and thereupon the costs of the appeal shall be added to the sum if any adjudged against the appellant by the conviction or order, and the justice shall proceed on the conviction or order as if there had been no appeal. R. S. O. (1887), c. 74, s. 8.*

900. In this section the expression "the court" means and includes any superior court of criminal jurisdiction for the province in which the proceedings herein referred to are carried on.

2. Any person aggrieved, the prosecutor or complainant as well as the defendant, who desires to question a conviction, order, determination or other proceeding of a justice under this part, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to such justice to state and sign a case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the justice declines to state the case, may apply to the court for an order requiring the case to be stated.

3. The application shall be made and the case stated within such time and in such manner as is, from time to time, directed by rules or orders under section five hundred and thirty-three of this Act.

4. The appellant at the time of making such application, and before a case is stated and delivered to him by the justice, shall in every instance, enter into a recognizance before such justice or any other justice exercising the same jurisdiction, with or without surety or sureties, and in such sum as to the justice seems meet, conditioned to prosecute his appeal without delay, and to submit to the judgment of the court and pay such costs as are awarded by the same; and the appellant shall, at the same time, and before he shall be entitled to have the case delivered to him, pay to the justice such fees as he is entitled to; and the appellant, if then in custody, shall be liberated upon the recognizance being further conditioned for his appearance before the same justice, or such other justice as is then sitting, within ten days after the judgment of the court has been given, to abide such judgment, unless the judgment appealed against is reversed.

5. If the justice is of opinion that the application is merely frivolous, but not otherwise, he may refuse to state a case, and shall on the request of the applicant sign and deliver to him a certificate of such refusal; provided that the justice shall not refuse to state a case where the application for that purpose is made to him by or under the direction of Her Majesty's Attorney-General of Canada, or of any province.

6. Where the justice refuses to state a case, it shall be lawful for the appellant to apply to the court, upon an affidavit of the facts, for a rule calling upon the justice, and also upon the respondent, to show cause why such case should not be stated; and such court may make such rule absolute, or discharge the application, with or without payment of costs, as to the court seems meet; and the justice upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance as hereinbefore provided.

7. The court to which a case is transmitted under the foregoing provisions shall hear and determine the question or questions of law arising thereon, and shall thereupon affirm, reverse or modify the conviction, order or determination in respect of which the case has been stated, or remit the matter to the justice with the opinion of the court thereon, and may make such other order in relation to the matter, and such orders as to costs, as to the court seems fit; and all such orders shall be final and conclusive upon all parties: Provided always, that any justice who states and delivers a case in pursuance of this section shall not be liable to any costs in respect or by reason of such appeal against his determination.

8. The court for the opinion of which a case is stated shall have power, if it thinks fit, to cause the case to be sent back for amendment; and thereupon the same shall be amended accordingly, and judgment shall be delivered after it has been amended.

9. The authority and jurisdiction hereby vested in the court for the opinion of which a case is stated may, subject to any rules and orders of court in relation thereto, be exercised by a judge of such court sitting in chambers, and as well in vacation as in term time.

10. After the decision of the court in relation to any such case stated for their opinion, the justice in relation to whose determination the case has been stated, or any other justice exercising the same jurisdiction, shall have the same authority to enforce any conviction, order or determination which has been affirmed, amended or made by such court as the justice who originally decided the case would have had to enforce his determination if the same had not been appealed against; and no action or proceeding shall be commenced or had against a justice for enforcing such conviction, order or determination by reason of any defect in the same.

11. If the court deems it necessary or expedient any order of the court may be enforced by its own process.

12. No writ of *certiorari* or other writ shall be required for the removal of any conviction, order or other determination in relation to which a case is stated under this section or otherwise, for obtaining the judgment or determination of a superior court on such case under this section.

13. In all cases where the conditions, or any of them, in any recognizance entered into in pursuance of this section have not been complied with, such recognizance shall be dealt with in like manner as is provided by section eight hundred and seventy-eight with respect to recognizances entered into thereunder.

14. Any person who appeals under the provisions of this section against any determination of a justice from which he is entitled to an appeal under

section eight hundred and seventy-nine of this Act, shall be taken to have abandoned such last mentioned right of appeal finally and conclusively and to all intents and purposes.

15. Where, by any special Act, it is provided that there shall be no appeal from any conviction or order, no proceedings shall be taken under this section in any case to which such provision in such special Act applies. 53 V. c. 37, s. 28. 42-43 V. c. 49, (Imp.).

901. Whenever a warrant of distress has issued against any person, and such person pays or tenders to the peace officer having the execution of the same, the sum or sums in the warrant mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, the peace officer shall cease to execute the same. R. S. C. c. 198 (178), s. 97.

2. Whenever any person is imprisoned for non-payment of any penalty or other sum, he may pay or cause to be paid to the keeper of the prison in which he is imprisoned, the sum in the warrant of commitment mentioned, together with the amount of the costs and charges and expenses therein also mentioned, and the keeper shall receive the same, and shall thereupon discharge the person, if he is in his custody for no other matter. He shall also forthwith pay over any moneys so received by him to the justice who issued the warrant. R. S. C. c. 198 (178), s. 98.

902. Every justice shall, quarterly, on or before the second Tuesday in each of the months of March, June, September and December in each year, make to the clerk of the peace or other proper officer of the court having jurisdiction in appeal, as herein provided, a return in writing, under his hand, of all convictions made by him, and of the receipt and application by him of the moneys received from the defendants,—which return shall include all convictions and other matters not included in some previous return, and shall be in the form SSS in schedule one to this Act.

2. If two or more justices are present, and join in the conviction, they shall make a joint return.

3. In the province of Prince Edward Island such return shall be made to the clerk of the court of assize of the county in which the convictions are made, and on or before the fourteenth day next before the sitting of the said court next after such convictions are so made.

4. Every such return shall be made in the said district of Nipissing, in the province of Ontario, to the clerk of the peace for the county of Renfrew, in the said province. R. S. C. c. 178, s. 99. (*Amended.*)

5. Every justice, to whom any such moneys are afterwards paid, shall make a return of the receipts and application thereof, to the court having jurisdiction in appeal as hereinbefore provided,—which return shall be filed by the clerk of the peace or the proper officer of such court with the records of his office. R. S. C. c. 178, s. 100.

6. Every justice, before whom any such conviction takes place or who receives any such moneys, who neglects or refuses to make such return thereof, or wilfully makes a false, partial or incorrect return, or wilfully receives a larger amount of fees than by law he is authorized to receive, shall incur a penalty of eighty dollars, together with costs of suit, in the discretion of the

2. Such clerk of the peace or other officer of each district or county, within twenty days after the end of each General or Quarter Sessions of the Peace, or the sitting of such court as aforesaid, shall transmit to the Minister of Finance and Receiver-General a true copy of all such returns made within his district or county. R. S. C. c. 178, s. 104.

The repealed clause also required publication in a newspaper.

904. All actions for penalties arising under the provisions of section nine hundred and two shall be commenced within six months next after the cause of action accrues, and the same shall be tried in the district, county or place wherein such penalties have been incurred; and if a verdict or judgment passes for the defendant, or the plaintiff becomes non-suit, or discontinues the action after issue joined, or if, upon demurrer or otherwise, judgment is given against the plaintiff, the defendant shall, *in the discretion of the court*, recover his costs of suit, as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases. R. S. C. c. 178, s. 102.

905. Nothing in the three sections next preceding shall have the effect of preventing any person aggrieved from prosecuting, by indictment, any justice, for any offence, the commission of which would subject him to indictment at the time of the coming into force of this Act. R. S. C. c. 178, s. 105.

906. No return purporting to be made by any justice under this Act shall be vitiated by the fact of its including, by mistake, any convictions or orders had or made before him in any matter over which any Provincial Legislature has exclusive jurisdiction, or with respect to which he acted under the authority of any provincial law. R. S. C. c. 178, s. 106.

907. No information, summons, conviction, order or other proceeding shall be held to charge two offences, or shall be held to be uncertain on account of its stating the offence to having been committed in different modes, or in respect of one or other of several articles, either conjunctively or disjunctively, for example, in charging an offence under section five hundred and eight of this Act it may be alleged that "the defendant unlawfully did cut, break, root up and otherwise destroy or damage a tree, sapling or shrub"; and it shall not be necessary to define more particularly the nature of the act done, or to state whether such act was done in respect of a tree, or a sapling, or a shrub. R. S. C. c. 178, s. 107.

The words "cut, break, root up" of the repealed s. 24, c. 168, R. S. C. have been left out of s. 508, *ante*, and are consequently erroneously inserted in this clause. S. 108, relating to seal on documents by justices has not been re-enacted; *see* Bond v. Conmee, 16 A. R. Ont. 398, confirmed in Supreme Court, March 20, 1890.

908 Every judge of Sessions of the Peace, *chairman of the court of General Sessions of the Peace*, police magistrate, district magistrate or stipendiary magistrate, shall have such and like powers and authority to preserve order in the said courts during the holding thereof, and by the like ways and means as now by law are or may be exercised and used in like cases and for the like purposes by any court in Canada, or by the judges thereof, during the sittings thereof. R. S. C. c. 178, s. 109.

909. Every judge of the Sessions of the Peace, *chairman of the court of General Sessions of the Peace*, recorder, magistrate, district magistrate or stipendiary magistrate, whenever any resistance is offered to the execution of any summons, warrant of execution or other process issued by him, may enforce the due execution of the same by the means provided by the law for enforcing the execution of the process of other courts in like cases. R. S. C. c. 178, s. 110.

PART LIX.

RECOGNIZANCES.

RENDER OF ACCUSED BY SURETY.

910. Any surety for any person charged with any indictable offence may upon affidavit showing the grounds therefor, with a certified copy of the recognizance, obtain from a judge of a superior court or from a judge of a county court having criminal jurisdiction, *or in the province of Quebec from a district magistrate*, an order in writing under his hand, to render such person to the common gaol of the county where the offence is to be tried.

2. The sureties, under such order, may arrest such person and deliver him, with the order, to the gaoler named therein, who shall receive and imprison him in the said gaol, and shall be charged with the keeping of such person until he is discharged by due course of law. R. S. C. c. 179, ss. 1 & 2.

The words in italics are new.

BAIL AFTER RENDER.

911. The person rendered may apply to a judge of a superior court, or in cases in which a judge of a county court may admit to bail, to a judge of a county court, to be again admitted to bail, who may on examination allow or refuse the same, and make such order as to the number of the sureties and the amount of recognizance as he deems meet,—which order shall be dealt with in the same manner as the first order for bail, and so on as often as the case requires. R. S. C. c. 179, s. 3.

DISCHARGE OF RECOGNIZANCE.

912. On due proof of such render, and certificate of the sheriff, proved by the affidavit of a subscribing witness, that such person has been so rendered, a judge of the superior or county court, as the case may be, shall order an entry of such render to be made on the recognizance by the officer in charge thereof, which shall vacate the recognizance, and may be pleaded or alleged in discharge thereof. R. S. C. c. 179, s. 4.

RENDER IN COURT.

913. The sureties may bring the person charged as aforesaid into the court at which he is bound to appear, during the sitting thereof, and then, by leave of the court, render him in discharge of such recognizance at any time before trial, and such person shall be committed to gaol, there to remain until discharged by due course of law; but such court may admit such person to bail for his appearance at any time it deems meet. R. S. C. c. 179, s. 5.

SURETIES NOT DISCHARGED BY ARRAIGNMENT OR CONVICTION.

914. The arraignment or conviction of any person charged and bound as aforesaid, shall not discharge the recognizance, but the same shall be effectual

for his appearance for trial or sentence, as the case may be; nevertheless the court may commit such person to gaol upon his arraignment or trial, or may require new or additional sureties for his appearance for trial or sentence, as the case may be, notwithstanding such recognizance; and such commitment shall be a discharge of the sureties. R. S. C. c. 179, s. 6.

RIGHT OF SURETY TO RENDER NOT AFFECTED.

915. Nothing in the foregoing provisions shall limit or restrict any right which a surety now has of taking and rendering to custody any person charged with any such offence, and for whom he is such surety. R. S. C. c. 179, s. 7.

ENTRY OF FINES, ETC., ON RECORD AND RECOVERY THEREOF.

916. Unless otherwise provided, all fines, issues, amercements and forfeited recognizances, the disposal of which is within the legislative authority of the Parliament of Canada, set, imposed, lost or forfeited before any court of criminal jurisdiction shall, within twenty-one days after the adjournment of such court be fairly entered and extracted on a roll by the clerk of the court, or in case of his death or absence, by any other person, under the direction of the judge who presided at such court, which roll shall be made in duplicate and signed by the clerk of the court, or in case of his death or absence, by such judge.

2. If such court is a superior court of criminal jurisdiction one of such rolls shall be filed with the clerk, prothonotary, registrar or other proper officer—

(a) in the provinces of Ontario, of a division of the High Court of Justice;

(b) in the provinces of Nova Scotia, New Brunswick and British Columbia, of the Supreme Court of the province;

(c) in the province of Prince Edward Island, of the Supreme Court of Judicature of that province;

(d) in the province of Manitoba, of the Court of Queen's Bench of that province; and

(e) in the North-west Territories, of the Supreme Court of the said territories,—

on or before the first day of the term next succeeding the court by or before which such fines or forfeitures were imposed or forfeited.

3. If such court is a court of General Sessions of the Peace, or a county court, one of such rolls shall remain deposited in the office of the clerk of such court.

4. The other of such rolls shall, as soon as the same is prepared, be sent by the clerk of the court making the same, or in case of his death or absence, by such judge as aforesaid, with a writ of *fiat facias* and *capias*, according to the form TTT in schedule one to this Act, to the sheriff of the county in and for which such court was holden; and such writ shall be authority to the sheriff for proceeding to the immediate levying and recovering of such fines, issues, amercements and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made;

and every person so taken shall be lodged in the common gaol of the county, until satisfaction is made, or until the court into which such writ is returnable, upon cause shown by the party, as hereinafter mentioned, makes an order in the case, and until such order has been fully complied with.

5. The clerk of the court shall, at the foot of each roll made out as herein directed, make and take an affidavit in the following form, that is to say :

"I, A. B. (*describing his office*), make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amercements, recognizances and forfeitures which were set, lost, imposed or forfeited, at or by the court therein mentioned, and which in right and due course of law, ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll ; and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in court or otherwise, without any wilful discharge, omission, misnomer or defect whatsoever. So help me God ;"

Which oath any justice of the peace for the county is hereby authorized to administer. R. S. C. c. 179, ss. 8, 9 & 15.

Not applicable to Quebec.

TTT.—(*Section 916.*)

WRIT OF FIERI FACIAS.

Victoria, by the Grace of God, &c.

To the sheriff of _____, Greeting :

You are hereby commanded to levy of the goods and chattels, lands and tenements, of each of the persons mentioned in the roll or extract to this writ annexed, all and singular the debts and sums of money upon them severally imposed and charged, as therein is specified ; and if any of the said several debts cannot be levied, by reason that no goods or chattels, lands or tenements can be found belonging to the said persons, respectively, then, and in all such cases, that you take the bodies of such persons, and keep them safely in the gaol of your county, there to abide the judgment of our court (*as the case may be*) upon any matter to be shown by them, respectively, or otherwise to remain in your custody as aforesaid, until such debt is satisfied unless any of such persons respectively gives sufficient security for his appearance at the said court, on the return day hereof, for which you will be held answerable ; and what you do in the premises make appear before us in our court (*as the case may be,*) on the _____ day of _____, term next, and have then

and there this writ. Witness, &c., G. H., clerk (*as the case may be*).

OFFICER TO PREPARE LISTS OF PERSONS UNDER RECOGNIZANCE MAKING DEFAULT.

917. If any person bound by recognizance for his appearance (or for whose appearance any other person has become so bound) to prosecute or give evidence on the trial of any indictable offence, or to answer for any common assault, or to articles of the peace, makes default, the officer of the court by whom the estreats are made out, shall prepare a list in writing, specifying the name of every person so making default, and the nature of the offence in respect of which such person, or his surety, was so bound, together with the residence, trade, profession or calling of every such person and surety,—and shall, in such list, distinguish the principals from the sureties, and shall state the cause, if known, why each such person did not appear, and whether, by reason of the non-appearance of such person, the ends of justice have been defeated or delayed. R. S. C. c. 179, s. 10.

PROCEEDING ON FORFEITED RECOGNIZANCE NOT TO BE TAKEN EXCEPT ON ORDER OF JUDGE, ETC.

918. Every such officer shall, before any such recognizance is estreated, lay such list before the judge or one of the judges who presided at the court, or if such court was not presided over by a judge, before two justices of the peace who attended at such court, and such judge or justices shall examine such list, and make such order touching the estreating or putting in process any such recognizance as appears just, subject, in the province of Quebec, to the provisions hereinafter contained; and no officer of any such court shall estreat or put in process any such recognizance without the written order of the judge or justices of the peace before whom respectively such list has been laid. R. S. C. c. 179, s. 11.

RECOGNIZANCE NEED NOT BE ESTREATED IN CERTAIN CASES.

919. Except in the cases of persons bound by recognizance for their appearance, or for whose appearance any other person has become bound to prosecute or give evidence on the trial of any indictable offence, or to answer for any common assault, or to articles of the peace, in every case of default whereby a recognizance becomes forfeited, if the cause of absence is made known to the court in which the person was bound to appear, the court, on consideration of such cause, and considering also, whether, by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated; and, with respect to all recognizances estreated, if it appears to the satisfaction of the judge who presided at such court that the absence of any person for whose appearance any recognizance was entered into, was owing to circumstances which rendered such absence justifiable, such judge may make an order directing that the sum forfeited upon such estreated recognizance shall not be levied.

2. The clerk of the court shall, for such purpose, before sending to the sheriff any roll, with a writ of *feri facias* and *capias*, as directed by section nine hundred and sixteen, submit the same to the judge who presided at the court,

and such judge may make a minute on the said roll and writ of any such forfeited recognizances and fines as he thinks fit to direct not to be levied; and the sheriff shall observe the direction in such minute written upon such roll and writ, or endorsed thereon: and shall forbear accordingly to levy any such forfeited recognizance or fine. R. S. C. c. 179, ss. 12 & 13.

Not applicable to Quebec.

SALE OF LANDS BY SHERIFF UNDER ESTREATED RECOGNIZANCE.

920. If upon any writ issued under section nine hundred and sixteen, the sheriff takes lands or tenements in execution, he shall advertise the same in like manner as he is required to do before the sale of lands in execution in other cases; and no sale shall take place in less than twelve months from the time the writ came to the hands of the sheriff. R. S. C. c. 179, s. 14.

Not applicable to Quebec.

DISCHARGE FROM CUSTODY ON GIVING SECURITY.

921. If any person on whose goods and chattels a sheriff, bailiff or other officer is authorized to levy any such forfeited recognizance, gives security to the said sheriff or other officer for his appearance at the return day mentioned in the writ, in the court into which such writ is returnable, then and there to abide the decision of such court, and also to pay such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as are adjudged and ordered by the court, such sheriff or officer shall discharge such person out of custody, and if such person does not appear in pursuance of his undertaking, the court may forthwith issue a writ of *feri facias* and *capias* against such person and the surety or sureties of the person so bound as aforesaid. R. S. C. c. 179, s. 16.

Not applicable to Quebec.

DISCHARGE OF FORFEITED RECOGNIZANCE.

922. The court, into which any writ of *feri facias* and *capias* issued under the provisions of this part is returnable, may inquire into the circumstances of the case, and may in its discretion, order the discharge of the whole of the forfeited recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, and make such order thereon as to such court appears just; and such order shall accordingly be a discharge to the sheriff, or to the party, according to the circumstances of the case. R. S. C. c. 179, s. 17.

Not applicable to Quebec.

RETURN OF WRIT BY SHERIFF.

923. The sheriff, to whom any writ is directed under this Act, shall return the same on the day on which the same is made returnable, and shall state, on the back of the roll attached to such writ, what has been done in the execution thereof; and such return shall be filed in the court into which such return is made. R. S. C. c. 179, s. 18.

Not applicable to Quebec.

ROLL AND RETURN TO BE TRANSMITTED TO MINISTER OF FINANCE.

924. A copy of such roll and return, certified by the clerk of the court into which such return is made, shall be forthwith transmitted to the Minister of Finance and Receiver-General, with a minute thereon of any of the sums therein mentioned, which have been remitted by order of the court, in whole or in part, or directed to be forborne, under the authority of section nine hundred and nineteen. R. S. C. c. 179, s. 19.

Not applicable to Quebec.

APPROPRIATION OF MONIES COLLECTED BY SHERIFF.

925. The sheriff or other officer shall, without delay, pay over all moneys collected under the provisions of this part by him, to the Minister of Finance and Receiver-General, or other person entitled to receive the same. R. S. C. c. 179, s. 20.

SPECIAL PROVISIONS FOR QUEBEC.

926. The provisions of sections nine hundred and sixteen and nine hundred and nineteen to nine hundred and twenty-four, both inclusive, shall not apply to the province of Quebec, and the following provisions shall apply to that province only :

2. Whenever default is made in the condition of any recognizance lawfully entered into or taken in any criminal case, proceeding or matter, in the province of Quebec, within the legislative authority of the Parliament of Canada, so that the penal sum therein mentioned becomes forfeited and due to the Crown, such recognizance shall thereupon be estreated or withdrawn from any record or proceeding in which it then is—or where the recognizance has been entered into orally in open court—a certificate or minute of such recognizance, under the seal of the court, shall be made from the records of such court.

(a) Such recognizance, certificate or minute, as the case may be, shall be transmitted by the court, recorder, justice of the peace, magistrate or other functionary before whom the cognizor, or the principal cognizor, where there is a surety or sureties, was bound to appear, or to do that, by his default to do which the condition of the recognizance is broken, to the Superior Court in the district in which the place where such default was made is included for civil purposes, with the certificate of the court, recorder, justice of the peace, magistrate or other functionary as aforesaid, of the breach of the condition of such recognizance, of which and of the forfeiture to the Crown of the penal sum therein mentioned, such certificate shall be conclusive evidence ;

(b) The date of the receipt of such recognizance or minute and certificate by the prothonotary of the said court, shall be endorsed thereon by him, and he shall enter judgment in favour of the Crown against the cognizor for the penal sum mentioned in such recognizance, and execution may issue therefor after the same delay as in other cases, which shall be reckoned from the time when the judgment is entered by the prothonotary of the said court ;

(c) Such execution shall issue upon fiat or *precipe* of the Attorney-General, or of any person thereunto authorized in writing by him ; and the Crown shall be entitled to the costs of execution and to costs on all proceedings in the case subsequent to execution, and to such costs, *in the discretion of the court*, for the entry of the judgment, as are fixed by any tariff.

3. Nothing in this section contained shall prevent the recovery of the sum forfeited by the breach of any recognizance from being recovered by suit in the manner provided by law, whenever the same cannot, for any reason, be recovered in the manner provided in this section ;

(a) In such case the sum forfeited by the non-performance of the conditions of such recognizance shall be recoverable, with costs, by action in any court having jurisdiction in civil cases to the amount, at the suit of the Attorney-General of Canada or of Quebec, or other person or officer authorized to sue for the Crown ; and in any such action it shall be held that the person suing for the Crown is duly empowered so to do, and that the conditions of the recognizance were not performed, and that the sum therein mentioned is, therefore, due to the Crown, unless the defendant proves the contrary.

4. In this section, unless the context otherwise requires, the expression "cognizor" includes any number of cognizors in the same recognizance, whether as principals or sureties.

5. When a person has been arrested in any district for an offence committed within the limits of the province of Quebec, and a justice of the peace has taken recognizances from the witnesses heard before him or another justice of the peace, for their appearance at the next session or term of the court of competent criminal jurisdiction, before which such person is to undergo his trial, there to testify and give evidence on such trial, and such recognizances have been transmitted to the office of the clerk of such court, the said court may proceed on the said recognizances in the same manner as if they had been taken in the district in which such court is held. R. S. C. c. 179, ss. 21, 22 and 23.

The mere failure of the party to answer, when called, in the term subsequent to that in which he was arraigned could not operate as a forfeiture of his bail: *The Atty.-General v. Beaulieu*, 3 L. C. J. 117.

On an information against the bail or surety of a person charged with subornation of perjury, *held*, that after the accused has pleaded guilty to an indictment, no default can be entered against him, except on a day fixed for his appearance, and that it is the duty of the court to estreat the recognizances in cases like the present: *R. v. Croteau*, 9 L. C. R. 67.

A recognizance taken before a police magistrate under 32 & 33 V. c. 30, s. 44, (D.), omitted the words "to owe": *Held*, fatal, and that an action would not lie upon the instrument as a recognizance: *R. v. Hoodless*, 45 U. C. Q. B. 556.

Held, that the forfeiture of a recognizance to appear was a debt sufficient to support the application for an attachment under the Absconding Debtor's Act, and that such writ may be granted at the suit of the crown, where the defendant absconds to avoid being arrested for a felony: *R. v. Stewart*, 8 P. R. Ont. 297.

A recognizance of bail put in on behalf of a prisoner, recited that he had been indicted at the court of general sessions of the peace for two separate offences, and the condition was, that he should appear at the next sitting of said court, and plead to such indictment as might be found against him by the grand jury; at the next of said sittings, the accused did not appear, and no new indictment was found against him: *Held*, that the recitals sufficiently showed the intention to be that the accused should appear and answer the indictments already found, and that an order estreating the recognizance was properly made: *Re Gauthreaux's Bail*, 9 P. R. Ont. 31.

If no indictment is found, the non-appearance of the defendant does not forfeit the recognizance: *R. v. Ritchie*, 1 U. C. L. J. (N. S.) 272.

PART LX.

FINES AND FORFEITURES.

APPROPRIATION OF FINES, ETC.

927. Whenever no other provision is made by any law of Canada for the application of any fine, penalty or forfeiture imposed for the violation of any such law, the same shall belong to the Crown for the public uses of Canada.

2. Any duty, penalty or sum of money, or the proceeds of any forfeiture, which is, by any Act, given to the Crown, shall, if no other provision is made respecting it, form part of the Consolidated Revenue Fund of Canada, and shall be accounted for and otherwise dealt with accordingly. R. S. C. c. 180, ss. 2 & 4.

APPLICATION OF FINES, ETC., BY ORDER IN COUNCIL.

928. The Governor in Council may from time to time direct that any fine, penalty or forfeiture, or any portion thereof, which would otherwise belong to the Crown for the public uses of Canada, be paid to any provincial, municipal or local authority, which wholly or in part bears the expenses of administering the law under which such fine, penalty or forfeiture is imposed, or that the same be applied in any other manner deemed best adapted to attain the objects of such law and to secure its due administration. R. S. C. c. 180, s. 3.

RECOVERY OF PENALTY OR FORFEITURE.

929. Whenever any pecuniary penalty or any forfeiture is imposed for any violation of any Act, and no other mode is prescribed for the recovery thereof, such penalty or forfeiture shall be recoverable or enforceable, with costs, in the discretion of the court, by civil action or proceeding at the suit of Her Majesty only, or of any private party suing as well for Her Majesty as for himself—in any form allowed in such case by the law of that province in which it is brought—before any court having jurisdiction to the amount of the penalty in cases of simple contract—upon the evidence of any one credible witness other than the plaintiff or party interested; and if no other provision is made for the appropriation of any penalty or forfeiture so recovered or enforced, one moiety shall belong to Her Majesty, and the other moiety shall belong to the private party suing for the same if any, and if there is none, the whole shall belong to Her Majesty. R. S. C. c. 180, s. 1.

LIMITATION OF ACTION.

930. No action, suit or information shall be brought or laid for any penalty or forfeiture under any such Act except within two years after the cause of action arises or after the offence is committed, unless the time is otherwise limited by such Act. R. S. C. c. 180, s. 5.

TITLE VIII.

PROCEEDINGS AFTER CONVICTION.

PART LXI.

PUNISHMENTS GENERALLY.

PUNISHMENT AFTER CONVICTION ONLY.

931. Whenever a person doing a certain act is declared to be guilty of any offence, and to be liable to punishment therefor, it shall be understood that such person shall only be deemed guilty of such offence and liable to such punishment after being duly convicted of such act. R. S. C. c. 181, s. 1.

DEGREES IN PUNISHMENT.

932. Whenever it is provided that the offender shall be liable to different degrees or kinds of punishment, the punishment to be inflicted shall, subject to the limitations contained in the enactment, be in the discretion of the court or tribunal before which the conviction takes place. R. S. C. c. 181, s. 2.

LIABILITY UNDER DIFFERENT PROVISIONS.

933. Whenever any offender is punishable under two or more Acts or two or more sections of the same Act, he may be tried and punished under any of such Acts or sections; but no person shall be twice punished for the same offence. R. S. C. c. 181, s. 3.

This section enacts that where an offender is punishable under two or more Acts, or two or more sections of the same Act, he may be punished under either. This is taken from the Imperial Code, but the Imperial Code went further, and enacted that thereafter no offence should be indictable at common law. This s. 933 of this Code leaves the common law in force. The rule is, that if a common law misdemeanour is made subject to a greater punishment by statute it may still be proceeded against as a common law misdemeanour; but if a common law misdemeanour is made a felony the misdemeanour has ceased to exist; and where an offence punishable at common law is made by statute punishable by a summary conviction both remedies exist: *Hamilton v. Massie*, 18 O. R. 585; 2 Hawk. c. 25, s. 4;

R. v. Wigg, 2 Salk. 460; R. v. Wright, 1 Burr. 543; R. v. Robinson, 2 Burr. 800; R. v. Carlile, 3 B. & Ald. 161; R. v. Gregory, 5 B. & Ad. 555; R. v. Crawshaw, Bell, 303; Bishop, Stat. Cr. par. 163 to 166 and s. 245; R. v. Dickenson, 1 Saund. 135. Also *per* Williams, J., in *Eastern Archipelago Co. v. the Queen*, 2 E. & B. 879; R. v. Adams, Car. and M. 299; R. v. Dixon, 10 Mod. 835; R. v. Buchanan, 8 Q. B. 883; R. v. Hall, 17 Cox, 278.

A prisoner should be able to gather from the indictment whether he is charged with an offence at the common law; or under a statute or, if there should be several statutes applicable to the subject under which statute he is charged, *per* Esten, V.-C., R. v. Cummings, 15 U. C. Q. B. 16.

FINE IMPOSED SHALL BE IN DISCRETION OF COURT.

934. Whenever a fine may be awarded or a penalty imposed for any offence, the amount of such fine or penalty shall within such limits, if any, as are prescribed in that behalf, be in the discretion of the court or person passing sentence or convicting, as the case may be. R. S. C. c. 181, s. 33.

PART LXII.

OF CAPITAL PUNISHMENT.

PUNISHMENT TO BE THE SAME ON CONVICTION BY VERDICT OR BY CONFESSION.

935. Every one who is indicted as principal or accessory for any offence made capital by any statute, shall be liable to the same punishment, whether he is convicted by verdict or on confession, *and this as well in the case of accessories as of principals.* R. S. C. c. 181, s. 4.

FORM OF SENTENCE OF DEATH.

936. In all cases where an offender is sentenced to death the sentence or judgment to be pronounced against him shall be, that he be hanged by the neck until he is dead. R. S. C. c. 181, s. 5.

A judgment may be altered at any time during the assizes; and a reprieve may be granted or taken off by a

judge, although the session may be adjourned or finished, and this, by reason of common usage: 2 Hale, 412; Dyer, 205.

REPORT BY THE JUDGE.

937. In the case of any prisoner sentenced to the punishment of death, the judge before whom such prisoner has been convicted shall forthwith make a report of the case to the Secretary of State, for the information of the Governor General; and the day to be appointed for carrying the sentence into execution shall be such as, in the opinion of the judge, will allow sufficient time for the signification of the Governor's pleasure before such day, and if the judge thinks such prisoner ought to be recommended for the exercise of the royal mercy, or if, from the non-decision of any point of law reserved in the case, or from any other cause, it becomes necessary to delay the execution, he, or any other judge of the same court, or who might have held or sat in such court, may, from time to time, either in term or in vacation, reprieve such offender for such period or periods beyond the time fixed for the execution of the sentence as are necessary for the consideration of the case by the Crown. R. S. C. c. 181, s. 8.

TREATMENT OF PERSONS CONDEMNED TO DEATH.

938. Every one who is sentenced to suffer death shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners; and no person except the gaoler and his servants, the medical officer or surgeon of the prison and a chaplain or a minister of religion, shall have access to any such convict, without the permission in writing of the court or judge before whom such convict has been tried, or of the sheriff. R. S. C. c. 181, s. 9.

EXECUTION TO BE PRIVATE.

939. Judgment of death to be executed on any prisoner shall be carried into effect within the walls of the prison in which the offender is confined at the time of execution. R. S. C. c. 181, s. 10.

WHO MAY BE PRESENT.

940. The sheriff charged with the execution, and the gaoler and medical officer or surgeon of the prison, and such other officers of the prison and such persons as the sheriff requires, shall be present at the execution. R. S. C. c. 181, s. 11.

941. Any justice of the peace for the district, county or place to which the prison belongs, and such relatives of the prisoner or other persons as it seems to the sheriff proper to admit within the prison for the purpose, and any minister of religion who desires to attend, may also be present at the execution. R. S. C. c. 181, s. 12.

CERTIFICATE OF DEATH.

942. As soon as may be after judgment of death has been executed on the offender, the medical officer or surgeon of the prison shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a

certificate thereof, in the form UUU in schedule one hereto, and deliver the same to the sheriff.

2 The sheriff and the gaoler of the prison, and such justices and other persons present, if any, as the sheriff requires or allows, shall also sign a declaration in the form VVV in the said schedule to the effect that judgment of death has been executed on the offender. R. S. C. c. 181, ss. 13 & 14.

As to a false certificate of execution *see* s. 158, *ante*.

FORMS UNDER TITLE VIII.

UUU.—(Section 942.)

CERTIFICATE OF EXECUTION OF JUDGMENT OF DEATH.

I, A. B., surgeon (*or as the case may be*) of the (*describe the prison*), hereby certify that I, this day, examined the body of C. D., on whom judgment of death was this day executed in the said prison; and that on such examination I found that the said C. D. was dead.

(Signed), A. B.

Dated this day of , in the year .

VVV.—(Section 942.)

DECLARATION OF SHERIFF AND OTHERS.

We, the undersigned, hereby declare that judgment of death was this day executed on C. D., in the (*describe the prison*) in our presence.

Dated this day of , in the year .

E. F., Sheriff of——

L. M., Justice of the Peace for——

G. H., Gaoler of——

&c., &c.

WHEN DEPUTIES MAY ACT.

943. The duties imposed upon the sheriff, gaoler, medical officer or surgeon by the two sections next preceding, may be and, in his absence, shall be performed by his lawful deputy or assistant, or other officer or person ordinarily acting for him, or conjointly with him, or discharging the duties of any such officer. R. S. C. c. 181, s. 15.

INQUEST BY CORONER.

944. A coroner of a district, county or place to which the prison belongs, wherein judgment of death is executed on any offender, shall, within twenty-four hours after the execution, hold an inquest on the body of the offender; and the jury at the inquest shall inquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender; and the inquisition shall be in duplicate, and one of the originals shall be delivered to the sheriff.

2. No officer of the prison and no prisoner confined therein shall, in any case, be a juror on the inquest. R. S. C. c. 181, ss. 16 & 17.

BURIAL OF THE BODY.

945. The body of every offender executed shall be buried within the walls of the prison within which judgment of death is executed on him, unless the Lieutenant-Governor in Council orders otherwise. R. S. C. c. 181, s. 18.

CERTIFICATE.

946. Every certificate and declaration, and a duplicate of the inquest required by this Act, shall in every case be sent with all convenient speed by the sheriff to the Secretary of State, or to such other officer as is, from time to time, appointed for the purpose by the Governor in Council; and printed copies of such several instruments shall, as soon as possible, be exhibited and shall, for twenty-four hours at least, be kept exhibited on or near the principal entrance of the prison within which judgment of death is executed. R. S. C. c. 181, s. 20.

As to false certificate *see* s. 158, *ante*.

NO ILLEGALITY FROM CERTAIN OMISSIONS.

947. The omission to comply with any provision of the preceding sections of this part shall not make the execution of judgment of death illegal in any case in which such execution would otherwise have been legal. R. S. C. c. 181, s. 21.

948. Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if the above provisions had not been passed. R. S. C. c. 181, s. 22.

RULES AND REGULATIONS.

949. The Governor in Council may, from time to time, make such rules and regulations to be observed on the execution of judgment of death in every prison, as he, from time to time, deems expedient for the purpose, as well of guarding against any abuse in such execution, as also of giving greater solemnity to the same, and of making known without the prison walls the fact that such execution is taking place.

2. All such rules and regulations shall be laid upon the tables of both Houses of Parliament within six weeks after the making thereof, or, if Parliament is not then sitting, within fourteen days after the next meeting thereof. R. S. C. c. 181, ss. 44 & 45.

The Imperial Act on capital executions is 21 V. c. 24.

Of course, when possible, it seems better that the sentence of death, and, in fact, any sentence, be passed by the judge who held the trial; but it is not an absolute necessity, and any judge of the same court may pronounce the sentence: 2 Hale, 405; 1 Chit. 697; R. v. Camplin, 1 Den. 89, as cited in R. v. Fletcher, Bell, 65.

If a case reserved is undecided, or if a writ of error is still pending, or if the Governor has not yet given his decision upon the case, or if a woman sentenced to death is pregnant, or if the prisoner becomes insane after the sentence, a reprieve may be granted either by the Governor, or any judge of the court where the trial was held, in term or in vacation: 1 Chit. 758; 2 Hale, 412.

It is clear that if, from any mistake or collusion, the criminal is cut down before he is really dead, and afterwards revives, he ought to be hanged again, for the judgment being "to be hanged by the neck till he be dead," is satisfied only by the death of the criminal: 1 Chit. 788; 2 Hale, 412.

PART LXIII.

IMPRISONMENT.

950. Every one who is convicted of any offence not punishable with death shall be punished in the manner, if any, prescribed by the statute especially relating to such offence. R. S. C. c. 181, s. 23.

951. Every person convicted of any indictable offence for which no punishment is specially provided, shall be liable to imprisonment for five years.

2. Every one who is summarily convicted of any offence for which no punishment is specially provided, shall be liable to a penalty not exceeding fifty dollars, or to imprisonment, with or without hard labour, for a term not exceeding six months, or to both. R. S. C. c. 181, s. 24 (as amended in 1893).

Imprisonment for life was the penalty for felonies by the repealed clause. By the above clauses, such felonies as

those enacted by s. 212, c. 82, and s. 94, c. 84, R. S. C. are now punishable only by five years or a mere fine; s. 958, *post*.

Twenty dollars and three months was the maximum on summary convictions in the repealed clause.

Imprisonment for one calendar month how computed : *Migotti v. Colville*, 4 C. P. D. 283, 14 Cox, 263, 305; *Henderson v. Preston*, 16 Cox, 445.

952. Every one who is convicted of an *indictable offence* not punishable with death, committed after a previous conviction for an *indictable offence*, is liable to imprisonment for *ten* years, unless some other punishment is directed by any statute for the particular offence,—in which case the offender shall be liable to the punishment thereby awarded, and not to any other. R. S. C. c. 181, s. 25. (*Amended*).

This is a singular piece of legislation if it means anything. All and every one of the indictable offences for which no special statutory punishment is provided, whether falling under this code or otherwise, are to be punished more severely if committed by one who has previously been convicted of an indictable offence. But for those falling under the code, and where the punishment is provided for, that is for every one of them, except a few, where the punishment has been "clerically" forgotten, (ss. 113, 137, 143, 501, for instances), a previous conviction of an indictable offence does not, as a rule, render an offender liable to a greater punishment. Section 356, which amends the law so as to limit it to previous convictions for *theft*, and ss. 418 & 478 as to burglary and offences against the coin are the only ones that provide for a greater punishment after a previous conviction. Why such a distinction? Evidently, we have here another piece of legislation by inadvertence. Bribery, undue influence and subornation of perjury at federal elections, for instance, are under ss. 951 and 952 punishable by five years penitentiary, and, if the offender has been previously convicted of an indictable offence, by ten years.

A train conductor drunk on duty, or who allows any baggage or freight car to be placed in the rear of the passenger cars (51 V. c. 29, ss. 291, 292) is likewise punishable by five years penitentiary, and, upon a second conviction, by ten years, whilst the forgery of a custom house mark or brand is only punishable upon summary conviction by a two hundred dollars fine : s. 210, c. 32, R. S. C.

MINIMUM TERM OF IMPRISONMENT.

953. Every one who is liable to imprisonment for life, or for any term of years, or other term, may be sentenced to imprisonment for any shorter term : Provided, that no one shall be sentenced to any shorter term of imprisonment than the minimum term, if any, prescribed for the offence of which he is convicted. R. S. C. c. 181, s. 26.

CUMULATIVE PUNISHMENTS.

954. When an offender is convicted of more offences than one, before the same court or person at the same sitting, or when any offender, under sentence or undergoing punishment for one offence, is convicted of any other offence, the court or person passing sentence may, on the last conviction, direct that the sentences passed upon the offender for his several offences shall take effect one after another. R. S. C. c. 181, s. 27.

See *R. v. Wilkes*, 4 Burr. 2577; *R. v. Williams*, 1 Leach, 536; *R. v. Orton*, 14 Cox, 486 and 546.

PENITENTIARY, ETC.

955. Every one who is sentenced to imprisonment for life, or for a term of years, not less than two, shall be sentenced to imprisonment in the penitentiary for the province in which the conviction takes place.

2. Every one who is sentenced to imprisonment for a term less than two years shall, if no other place is expressly mentioned, be sentenced to imprisonment in the common gaol of the district, county or place in which the sentence is pronounced, or if there is no common gaol there, then in that common gaol which is nearest to such locality, or in some lawful prison or place of confinement, other than a penitentiary, in which the sentence of imprisonment may be lawfully executed.

3. Provided that where any one is sentenced to imprisonment in a penitentiary, and at the same sittings or term of the court trying him is sentenced for one or more other offences to a term or terms of imprisonment less than two years each, he may be sentenced for such shorter terms to imprisonment in the same penitentiary, such sentences to take effect from the termination of his other sentence.

4. Provided further that any prisoner sentenced for any term by any military, naval or militia court-martial, or by any military or naval authority under any Mutiny Act, may be sentenced to imprisonment in a penitentiary; and if such prisoner is sentenced to a term less than two years, he may be sen-

tenced to imprisonment in the common gaol of the district, county or place in which the sentence is pronounced, or in such other prison or place of confinement as is provided by sub-section two of this section with respect to persons sentenced thereunder.

5. Imprisonment in a penitentiary, in the Central Prison for the province of Ontario, in the Andrew Mercer Ontario Reformatory for females, and in any reformatory prison for females in the province of Quebec, shall be with hard labour, whether so directed in the sentence or not.

6. Imprisonment in a common gaol, or a public prison, other than those last mentioned, shall be with or without hard labour, in the discretion of the court or person passing sentence, if the offender is convicted on indictment, or under the provisions of Parts LIV. or LV. (Ss. 762, 782), or before a judge of the Supreme Court of the North-west Territories, and in other cases may be with hard labour, if hard labour is part of the punishment for the offence of which such offender is convicted—and if such imprisonment is to be with hard labour, the sentence shall so direct.

7. The term of imprisonment, in pursuance of any sentence, shall, unless otherwise directed in the sentence, commence on and from the day of passing such sentence, but no time during which the convict is out on bail shall be reckoned as part of the term of imprisonment to which he is sentenced.

8. Every one who is sentenced to imprisonment in any penitentiary, gaol, or other public or reformatory prison, shall be subject to the provisions of the statutes relating to such penitentiary, gaol or prison, and to all rules and regulations lawfully made with respect thereto. R. S. C. c. 181, s. 28; 53 V. c. 37, s. 31.

Under s-s. 7, a confinement in a lunatic asylum does not interrupt the sentence: *Ex parte Armellini*, 14 R. L. 311.

REFORMATORIES.

956. The court or person before whom any offender whose age at the time of his trial does not, in the opinion of the court, exceed sixteen years, is convicted, whether summarily or otherwise, of any offence punishable by imprisonment, may sentence such offender to imprisonment in any reformatory prison in the province in which such conviction takes place, subject to the provisions of any Act respecting imprisonment in such reformatory; and such imprisonment shall be substituted, in such case, for the imprisonment in the penitentiary or other place of confinement by which the offender would otherwise be punishable under any Act or law relating thereto: Provided, that in no case shall the sentence be less than two years' or more than five years' confinement in such reformatory prison; and in every case where the term of imprisonment is fixed by law to be more than five years, then such imprisonment shall be in the penitentiary.

2. Every person imprisoned in a reformatory shall be liable to perform such labour as is required of such person. R. S. C. c. 181, s. 29.

PART LXIV.

WHIPPING.

957. Whenever whipping may be awarded for any offence, the court may sentence the offender to be once, twice or thrice whipped, within the limits of the prison, under the supervision of the medical officer of the prison; and the number of strokes and the instrument with which they shall be inflicted shall be specified by the court in the sentence: and, whenever practicable, every whipping shall take place not less than ten days before the expiration of any term of imprisonment to which the offender is sentenced for the offence.

2. Whipping shall not be inflicted on any female. R. S. C. c. 181, s. 30.

PART LXV.

SURETIES FOR KEEPING THE PEACE, AND FINES.

958. Every court of criminal jurisdiction and every magistrate under Part LV. (s. 782) before whom any person shall be convicted of an offence and shall not be sentenced to death, shall have power in addition to any sentence imposed upon such person, to require him forthwith to enter into his own recognizances, or to give security to keep the peace, and be of good behaviour *for any term not exceeding two years*, and that such person in default shall be imprisoned for not more than one year after the expiry of his imprisonment under his sentence, or until such recognizances are sooner entered into or such security sooner given, and any person convicted of an indictable offence punishable with imprisonment for five years or less may be fined in addition to or in lieu of any punishment otherwise authorized, *in which case the sentence may direct that in default of payment of his fine, the person so convicted shall be imprisoned until such fine is paid, or for a period not exceeding five years, to commence at the end of the term of imprisonment awarded by the sentence or forthwith as the case may require.* R. S. C. c. 181, s. 31. (*As amended in 1893*).

The words in italics are new: see s. 984, ante, as to amount of fine when specified. "Security" defined by Interpretation Act, R. S. C. c. 1.

RECOGNIZANCE TO KEEP THE PEACE—ARTICLES OF THE PEACE. (*New*).

(*As amended in 1893.*)

959. Whenever any person is charged before a justice with an offence triable under Part LVIII. which, in the opinion of such justice is directly against the peace, and the justice after hearing the case is satisfied of the guilt of the accused, and that the offence was committed under circumstances which render it probable that the person convicted will be again guilty of the same or some other offence against the peace unless he is bound over to good behaviour, such justice may, in addition to, or in lieu of, any other sentence which may be imposed upon the accused, require him forthwith to enter into his own recognizances (*recognizance*), or to give security to keep the peace and be of good behaviour for any term not exceeding twelve months.

2. Upon complaint by or on behalf of any person that on account of threats made by some other person or on any other account, he, the complainant, is afraid that such other person will do him, his wife or child some personal injury, or will burn or set fire to his property, the justice before whom such complaint is made may, if he is satisfied that the complainant has reasonable grounds for his fears, require such other person to enter into his own recognizances (*recognizance*), or to give security, to keep the peace, and to be of good behaviour, for a term not exceeding twelve months.

3. The provisions of Part LVIII. shall apply so far as the same are applicable to proceedings under this section, and the complainant and defendant and witnesses may be called and examined, and cross-examined, and the complainant and defendant shall be subject to costs as in the case of any other complaint.

4. If any person so required to enter into his own recognizances (*recognizance*) or give security as aforesaid, refuses or neglects so to do, the same or any other justice may order him to be imprisoned for any term not exceeding twelve months.

5. The forms WWW, XXX and YYY, with such variations and additions as the circumstances may require, may be used in proceedings under this section.

The forms XXX and YYY, taken originally from 16 V. c. 178 (for Upper Canada), are not in conformity with this enactment.

As to articles of the peace, see Bacon's Abr. v. surety of the peace; Archbold's Quart. Sess. 268; Magisterial Guide, Greenwood & Martin, 758; Clarke's Magistrates' Manual, 2nd edit., 542.

No provision is made for the recourse against the sureties where the principal breaks the peace within the time specified.

"Security" defined, Interpretation Act, R. S. C. c. 1.

WWW.—(Section 959.)

COMPLAINT BY THE PARTY THREATENED, FOR SURETIES
FOR THE PEACE.

Canada, }
 Province of , }
 County of . }

The information (or complaint) of C. D., of , in the said county of , (labourer), (if preferred by an attorney or agent, say—by D. E., his duly authorized agent (or attorney), in this behalf, taken upon oath, before me, the undersigned, a justice of the peace, in and for the said county of , at in the said county of , this day of , in the year , who says that A. B., of , in the said county, did, on the day of (instant or last past), threaten the said C. D. in the words or to the effect following, that is to say: (*set them out, with the circumstances under which they were used*); and that from the above and other threats used by the said A. B. towards the said C. D., he, the said C. D., is afraid that the said A. B. will do him some bodily injury, and therefore prays that the said A. B. may be required to find sufficient sureties to keep the peace and be of good behaviour towards him, the said C. D.; and the said C. D. also says that he does not make this complaint against nor require such sureties from the said A. B. from any malice or ill-will, but merely for the preservation of his person from injury.

XXX.—(Section 959.)

FORM OF RECOGNIZANCE FOR THE SESSIONS.

Canada, }
 Province of , }
 County of . }

Be it remembered that on the day of , in the year . A. B. of (labourer), L. M. of and N. O. of , (butcher), personally came before (us) the undersigned, (two) justices of the peace for the county of and severally acknowledged themselves to owe to our Lady the Queen the several sums following, that is to say: the said A. B.

the sum of , and the said L. M. and N. O. the sum of each, of good and lawful money of Canada, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her heirs and successors, if he, the said A. B., fails in the condition endorsed (or hereunder written).

Taken and acknowledged the day and year first above mentioned, at before us.

J. S.,

J. T.,

J. P.'s (Name of county.)

The condition of the within (or above) written recognizance is such that if the within bound A. B., (of, &c.), * appears at the next Court of General Sessions of the Peace, (or other Court discharging the functions of the Court of General Sessions), to be holden in and for the said county of , to do and receive what is then and there enjoined him by the court, and in the meantime* keeps the peace and is of good behaviour towards Her Majesty and her liege people, and specially towards C. D. (of &c.) for the term of now next ensuing, then the said recognizance to be void, otherwise to stand in full force and virtue.

The words between the asterisks ** to be used only where the principal is required to appear at the sessions of such other court.

YYY.—(Section 959.)

FORM OF COMMITMENT IN DEFAULT OF SURETIES.

Canada, }
Province of }
County of }

To all or any of the other peace officers in the county of
and to the keeper of the common gaol of the said county,
at , in the said county.

Whereas on the day of (instant), complaint on oath was made before the undersigned (or J. L., Esquire, a justice of the peace in and for the said county of , by C. D., of , in the said county, (labourer), that A. B., of (&c.), on the day of , at aforesaid, did

threaten (*etc.*, follow to the end of complaint, as in form above, in the past tense, then): And whereas the said A. B. was this day brought and appeared before me, the said justice (or J. L. Esquire, a justice of the peace in and for the said county of), to answer unto the said complaint; and having been required by me to enter into his own recognizance in the sum of , with two sufficient sureties in the sum of each, * as well for his appearance at the next General Sessions of the Peace (or other court discharging the functions of the Court of General Sessions, or as the case may be), to be held in and for the said county of , to do what shall be then and there enjoined him by the court, as also in the meantime * to keep the peace and be of good behaviour towards Her Majesty and her liege people, and especially towards the said C.D., has refused and neglected, and still refuses and neglects, to find such sureties: These are, therefore, to command you, and each of you, to take the said A. B., and him safely to convey to the (common gaol) at aforesaid, and there to deliver him to the keeper thereof, together with this precept: and I do hereby command you, the said keeper of the said (common gaol), to receive the said A. B. into your custody in the said (common gaol), there to imprison him until the said next General Sessions of the Peace (or the next term or sitting of the said court discharging the functions of the Court of General Sessions, or as the case may be), unless he, in the meantime, finds sufficient sureties as well for his appearance at the said Sessions (or court) as in the meantime to keep the peace as aforesaid.

Given under my hand and seal, this day of ,
in the year , at , in the county aforesaid.

J. S., [SEAL.]

J. P., (Name of county.)

The words between the asterisks ** to be used when the recognizance is to be so conditioned.

NOTICE WHEN ANY ONE IS IMPRISONED FOR WANT OF SURETIES.

960. Whenever any person who has been required to enter into a recognizance with sureties to keep the peace and be of good behaviour has, on account of his default therein, remained imprisoned for two weeks, the sheriff, gaoler or warden shall give notice, in writing, of the facts to a judge of a

Superior Court, or to a judge of the County Court of the county or district in which such gaol or prison is situate, and in the cities of Montreal and Quebec to a judge of the sessions of the peace for the district, or, in the North-west Territories to a stipendiary magistrate,—and such judge or magistrate may order the discharge of such person, thereupon or at a subsequent time, upon notice to the complainant or otherwise, or may make such other order as he sees fit, respecting the number of sureties, the sum in which they are to be bound and the length of time for which such person may be bound. R. S. O. c. 181, s. 32. 51 V. c. 47, s. 2.

PART LXVI.

DISABILITIES. (*New*).

961. If any person hereafter convicted of treason or any indictable offence for which he is sentenced to death or imprisonment for a term exceeding five years, holds at the time of such conviction any office under the Crown or other public employment, or is entitled to any pension or superannuation allowance payable by the public, or out of any public fund, such office or employment shall forthwith become vacant, and such pension or superannuation allowance or emolument shall forthwith determine and cease to be payable, unless such person receives a free pardon from Her Majesty, within two months after such conviction, or before the filling up of such office or employment, if given at a later period; and such person shall become, and (until he suffers the punishment to which he is sentenced, or such other punishment as by competent authority is substituted for the same, or receives a free pardon from Her Majesty) shall continue thenceforth incapable of holding any office under the Crown, or other public employment, or of being elected, or sitting, or voting, as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal franchise. 33-34 V. (U. K.) c. 23, s. 2.

2. The setting aside of a conviction by competent authority shall remove the disability herein imposed.

PART LXVII.

PUNISHMENTS ABOLISHED.

962. Outlawry in criminal cases is abolished. (*New*).

963. The punishment of solitary confinement or of the pillory shall not be awarded by any court. R. S. C. c. 181, s. 34.

964. There shall be no forfeiture of any chattels, which have moved to or caused the death of any human being, in respect of such death. R. S. C. c. 181, s. 35.

By the common law, *omnia quæ movent ad mortem sunt Deo danda*. Hence the word "deodand," which signified a personal chattel which had been the immediate occasion of the death of any reasonable creature, and which, in consequence, was forfeited to the Crown, to be applied to pious uses, and distributed in alms by the High Almoner. Whether the death were accidental or intended, whether the person whose chattel had caused the death participated in the act or not, was immaterial. The cart, the horse, the sword, or anything which had occasioned the death of a human being, or the value thereof, was forfeited, if the party died within a year and a day from the wound received. And for this object the coroner's jury had to inquire what instrument caused the death, and to establish the value of it. But the jury used to find a nominal value only, and confine the deodand to the very thing or part of the thing itself which caused the death, as, if a waggon, to one of the wheels only: R. v. Rolfe, Fost. 266; 1 Hawk. 74; 1 Blacks. 300. This forfeiture, "which seemeth to have been originally founded rather in the superstition of an age of extreme ignorance than in the principles of sound reason and true policy," Fost. 266, was abolished in England on the 1st day of September, 1846, by the 9 & 10 V. c. 62.

ATTAINDER ABOLISHED. (*New.*)

965. From and after the passing of this Act no confession, verdict, inquest, conviction or judgment of or for any treason or indictable offence or *felo de se* shall cause any attainder or corruption of blood, or any forfeiture or escheat; Provided that nothing in this section shall affect any fine or penalty imposed on any person by virtue of his sentence, or any forfeiture in relation to which special provision is made by any Act of the Parliament of Canada. 33-34 V. (U. K.) c. 23, ss. 1, 6 & 5. R. S. C. c. 181, ss. 30-37.

By the common law, a man convicted of treason or felony stands *attainted*. By this attainder, he loses his civil rights and capacities, and becomes dead in law, *civiliter mortuus*: 1 Stephens' Comm. 141. He forfeits to the King all his lands and tenements, as well as his personal estate, his blood is corrupted, so that nothing can pass by inheritance to, from or through him: 4 Blacks. 380, 387. But the lands or tenements are not vested in the Crown during the life of the offender, *without office or office-found* which is a finding by a jury of a fact which entitles the Crown to the possession of such lands or tenements: Wharton's Law Lexicon.

PART LXVIII.

PARDONS.

966. The Crown may extend the royal mercy to any person sentenced to imprisonment by virtue of any statute, although such person is imprisoned for non-payment of money to some person other than the Crown.

2. Whenever the Crown is pleased to extend the royal mercy to any offender convicted of an indictable offence punishable with death or otherwise, and grants to such offender either a free or a conditional pardon, by warrant under the royal sign manual, countersigned by one of the principal Secretaries of State, or by warrant under the hand and seal-at-arms of the Governor General, the discharge of such offender out of custody, in case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon of such offender, under the great seal, as to the offence for which such pardon has been granted; but no free pardon, nor any discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any offence other than that for which a pardon was granted. R. S. C. c. 181, ss. 38 & 39.

COMMUTATION.

967. The Crown may commute the sentence of death passed upon any person convicted of a capital offence to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in any gaol or other place of confinement for any period less than two years, with or without hard labour; and an instrument under the hand and seal-at-arms of the Governor General, declaring such commutation of sentence, or a letter or other instrument under the hand of the Secretary of State or of the Under Secretary of State, shall be sufficient authority to any judge or justice, having jurisdiction in such case, or to any sheriff or officer to whom such letter or instrument is addressed, to give effect to such commutation, and to do all such things and to make such orders, and to give such directions, as are requisite for the change of custody of such convict, and for his conduct to and delivery at such gaol or place of confinement or penitentiary, and his detention therein, according to the terms on which his sentence has been commuted. R. S. C. c. 181, s. 40.

UNDERGOING SENTENCE.

968. When any offender has been convicted of an offence not punishable with death, and has endured the punishment to which such offender was adjudged,—or if such offence is punishable with death and the sentence has been commuted, then if such offender has endured the punishment to which his sentence was commuted, the punishment so endured shall, as to the offence whereof the offender was so convicted, have the like effect and conse-

quences as a pardon under the great seal; but nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any other offence. R. S. C. c. 181, s. 41.

See Leyman v. Latimer, 14 Cox, 51.

UNDERGOING PUNISHMENT A BAR TO ANOTHER PROSECUTION.

969. When any person convicted of any offence has paid the sum adjudged to be paid, together with costs, if any, under such conviction, or has received a remission thereof from the Crown, or has suffered the imprisonment awarded for non-payment thereof, or the imprisonment awarded in the first instance, or has been discharged from his conviction by the justice of the peace in any case in which such justice of the peace may discharge such person, he shall be released from all further or other criminal proceedings for the same cause. R. S. C. c. 181, s. 42.

See s. 866, ante, and 24 & 25 V. c. 100, ss. 44, 45 (Imp.).

This enactment applies only to summary convictions, and creates a bar to ulterior criminal, not to civil proceedings. *See R. v. Miles, 17 Cox, 9, 24 Q. B. D. 423, Warb. Lead. Cas. 280, and cases there cited.*

ROYAL PREROGATIVE.

970. Nothing in this part shall in any manner limit or affect Her Majesty's royal prerogative of mercy. R. S. C. c. 181, s. 43.

CONDITIONAL RELEASE OF FIRST OFFENDERS.

971. In any case in which a person is convicted before any court of any offence punishable with not more than two years' imprisonment, and no previous conviction is proved against him, if it appears to the court before which he is so convicted, that, regard being had to the youth, character, and antecedents of the offender, to the trivial nature of the offence, and to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the court may instead of sentencing him at once to any punishment, direct that he be released on his entering into a recognizance, with or without sureties, and during such period as the court directs, to appear and receive judgment when called upon, and in the meantime to keep the peace and be of good behaviour.

2. The court may, if it thinks fit, direct that the offender shall pay the costs of the prosecution, or some portion of the same, within such period and by such instalments as the court directs. 52 V. c. 44, s. 2.

972. The court, before directing the release of an offender under the next preceding section, shall be satisfied that the offender or his surety has a fixed place of abode or regular occupation in the county or place for which the court acts, or in which the offender is likely to live during the period named for the observance of the conditions. 52 V. c. 44, s. 4.

973. If a court having power to deal with such offender in respect of his original offence or any justice of the peace is satisfied by information on oath that the offender has failed to observe any of the conditions of his recognizance, such court or justice of the peace may issue a warrant for his apprehension.

2. An offender, when apprehended on any such warrant, shall, if not brought forthwith before the court having power to sentence him, be brought before the justice issuing such warrant or before some other justice in and for the same territorial division, and such justice shall either remand him by warrant until the time at which he was required by his recognizance to appear for judgment, or until the sitting of a court having power to deal with his original offence, or admit him to bail (with a sufficient surety) conditioned on his appearing for judgment.

3. The offender when so remanded may be committed to a prison, either for the county or place in or for which the justice remanding him acts, or for the county or place where he is bound to appear for judgment; and the warrant of remand shall order that he be brought before the court before which he was bound to appear for judgment, or to answer as to his conduct since his release. 52 V. c. 44, s. 3.

974. In the three next preceding sections the expression "court" means and includes any superior court of criminal jurisdiction, any "judge" or court within the meaning of Part LV., and any "magistrate" within the meaning of Part LVI. of this Act. 52 V. c. 44, s. 1.

TITLE IX.

ACTIONS AGAINST PERSONS ADMINISTERING THE CRIMINAL LAW.

975. Every action and prosecution against any person for anything purporting to be done in pursuance of any Act of the Parliament of Canada relating to criminal law, shall, unless otherwise provided, be laid and tried in the district, county or other judicial division, where the act was committed and not elsewhere, and shall not be commenced except within six months next after the act committed. R. S. C. c. 185, s. 1.

976. Notice in writing of such action and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action. R. S. C. c. 185, s. 2.

977. In any such action the defendant may plead the general issue, and give the provisions of this title and the special matter in evidence at any trial had thereupon. R. S. C. c. 185, s. 3.

978. No plaintiff shall recover in any such action if tender of sufficient amends is made before such action brought, or if a sufficient sum of money is paid into court by or on behalf of the defendant after such action brought. R. S. C. c. 185, s. 4.

979. If such action is commenced after the time hereby limited for bringing the same, or is brought or the venue laid in any other place than as aforesaid, a verdict shall be found or judgment shall be given for the defendant; and thereupon or if the plaintiff becomes nonsuit, or discontinues any such action after issue joined, or if upon demurrer or otherwise judgment is given against the plaintiff, the defendant shall, in the discretion of the court, recover his full costs as between solicitor and client, and shall have the like remedy for the same as any defendant has by law in other cases; and although a verdict or judgment is given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge, before whom the trial is had, certifies his approval of the action. R. S. C. c. 185, s. 5.

980. Nothing herein shall prevent the effect of any Act in force in any Province of Canada, for the protection of justices of the peace or other officers from vexatious actions for things purporting to be done in the performance of their duty. R. S. C. c. 185, s. 6.

TITLE X.

REPEAL, ETC.

981. The several Acts set out and described in schedule two to this Act shall, from and after the date appointed for the coming into force of this Act, be repealed to the extent stated in the said schedule.

2. (As amended in 1893.) The provisions of this Act which relate to procedure shall apply to all prosecutions commenced on or after the day upon which this Act comes into force, in relation to any offence, whensoever committed. The proceedings in respect of any prosecution commenced before the said date otherwise than under the Summary Convictions Act, shall, up to the time of committal for trial, be continued as if this Act had not been passed, and after committal for trial shall be subject to all the provisions of this Act relating to procedure, so far as the same are applicable thereto. The proceedings in respect of any prosecutions commenced before the said day, under the Summary Convictions Act, shall be continued and carried on as if this Act had not been passed.

Sub-section 1 of this s. 981 is intended to enact that the repeal of the divers Acts, described in schedule two, shall come into force on the 1st of July, 1893, the date fixed by s. 2, for the coming into force of the code. A simple way to do so, and the usual way in statutory language, would have been to merely enact that the several Acts mentioned in the schedule are repealed. The code and the repeal clause would then have come into force together; but, as the section reads, it is open to the construction that whilst the code comes into force on the 1st of July, the repeal of the divers Acts mentioned takes effect only on the 2nd of July.

FORMS.

982. The several forms in schedule one to this Act, varied to suit the case or forms to the like effect, shall be deemed good, valid and sufficient in law. R. S. C. c. 174, s. 278; c. 178, s. 111.

These forms are inserted under the sections to which they respectively apply.

See also Interpretation Act: R. S. C. c. 1, s. 7, s-s. 44, as to forms generally.

Some of these forms are nothing but "snares to entrap persons." The form of indictment, for instance, in schedule one, FF *d.* (see under s. 611, *ante*), for the offence provided for by s. 146, s-s. 2, cannot be followed. The words "penal servitude" in it are nonsensical. There is no such punishment in Canada. The form in the Imperial draft Code of 1879 has been slavishly copied, without paying attention to the differences in the punishments in England and Canada. The form for the offence provided for by s. 241 is also totally wrong. There is no such offence as *doing actual* bodily harm to any one with intent to maim.

See *R. v. Johnson*, 8 Q. B. 102; *R. v. Kimber*, 3 Cox, 223. Compare *Barnes v. White*, 1 C. B. 192; in re Allison, 10 Ex. 561; *R. v. Sansome*, 1 Den. 545; *Egginton's case*, 5 E. & B. 100; *Charter v. Greame*, 18 Q. B. 216; *R. v. Bain*, Ramsay's App. Cas. 191; *R. v. Davis*, 18 U. C. Q. B. 180; *R. v. Shaw*, 28 U. C. Q. B. 616; *Moffatt v. Barnard*, 24 U. C. Q. B. 498; *R. v. Turner*, 1 Moo. 239, 4 B. & Ald. 510; *R. v. Bent*, 1 Den. 157; *R. v. Cox*, 1 Leach 71; *R. v. Ryan*, 2 Moo. 15; *R. v. Lewis*, 2 Russ. 1067; *R. v. Cummings*, 16 U. C. Q. B. 15; *R. v. McLaughlin*, 8 Allen, (N. B.), 159.

APPLICATION OF THE ACT, ETC.

983. The provisions of this Act extend to and are in force in the North-West Territories and the district of Keewatin except in so far as they are inconsistent with the provisions of the *North-West Territories Act* or *The Keewatin Act* and the amendments thereto.

2. Nothing in this Act shall affect any of the laws relating to the government of Her Majesty's land or naval forces.

3. Nothing herein contained shall affect the Acts and parts of Acts in the appendix to this Act. And in construing such parts reference may be had to the repealed portions of the Acts of which respectively they form parts, as well as to any sections of this Act which have been substituted therefor, or which deal with like matters.

This s-s. 3 and the appendix, taken together, are not always in accord with s. 981 and sched. 2. The latter one, for instance, repeals the whole of c. 157 of the Revised Statutes. The former enacts that one sub-section of it is

in force. (This has since been remedied by the Amendment Act of 1893). Two sections of c. 158, and two of c. 163 are left unrepealed by sched. 2, but are not to be found in the appendix, though it is headed "Acts and parts of Acts which are not affected by this Act." Seven sections of c. 167 are left unrepealed by sched. 2, but six only could find place in the appendix. One sub-section of c. 173 is left unrepealed by sched. 2, but there is no trace of it in the appendix. To compensate for it it would seem only three sections of 51 V. c. 41, are left unrepealed by sched. 2, whilst five sections of it are in the appendix. One section out of thirteen of 53 V. c. 37, left unrepealed by sched. 2 is not in the appendix. It clearly was erroneously left unrepealed, but this one error added to the other ones shows with what carelessness the whole work has been done.

Then the Act respecting the postal service is given as c. 36 of the Revised Statutes, instead of c. 35; s. 86, and others of that Act have been left unrepealed whilst other penal sections have been repealed. S. 6 of 53 V. c. 37 is left unrepealed, though re-enacted by s. 177 of the code. Ss. 5, 6, 13, 14, & 15 of c. 151 R. S. C. are left unrepealed though re-enacted in ss. 117 & 118. S. 101 of c. 50 R. S. C., is also left unrepealed, though re-enacted in s. 116. S. 102, c. 8, R. S. C., is left unrepealed, though re-enacted in ss. 329 and 503. S. 1 of c. 152, R. S. C., is left unrepealed though re-enacted by and clashing with s. 113. S. 8 of c. 141, R. S. C. was left as unrepealed, but it had been repealed in 1890 by 53 V. c. 37, s. 41. The Canada Evidence Act of 1893 has since repealed the whole of that c. 141.

SCHEDULE ONE.

FORMS.

See under the various sections to which the forms respectively apply.

SCHEDULE TWO.

ACTS REPEALED.

ACTS REPEALED.	TITLE.	EXTENT OF REPEAL.
C. S. L. C. c. 10	An Act respecting seditious and unlawful Associations and oaths.	Secs 1, 2, 3 & 4.
B. S. C. c. 32	An Act respecting the Customs.	Sec. 213.
" 34	An Act respecting the Inland Revenue.	Secs. 98 & 99.
" 36	An Act respecting the Postal Service.	Secs. 70 to 81, 88, 84, 88, 90, 91, 96, 103, 107, 110 & 111.
" 38	An Act respecting Government Railways.	Sec. 62.
" 41	An Act respecting the Militia and Defence of Canada.	Sec. 109.
" 43	An Act respecting Indians.	Secs. 106 (ss. 2) & 111.
" 45	An Act respecting Immigration and Immigrants.	Sec. 37.
" 81	An Act respecting Wrecks, Casualties and Salvage.	Secs. 55 to 57.
" 141	An Act respecting Extra-judicial oaths.	Secs. 1 & 2.
" 145	An Act respecting Accessories.	The whole Act.
" 146	An Act respecting Treason and other offences against the Queen's authority.	The whole Act, except sec. 6 & 7.
" 147	An Act respecting Riots, unlawful assemblies and breaches of the peace.	The whole Act.
" 148	An Act respecting the improper use of firearms and other weapons.	The whole Act, except sec. 7.
" 149	An Act respecting the seizure of arms kept for dangerous purposes.	The whole Act, except sec. 5 & 7.
" 150	An Act respecting Explosive Substances.	The whole Act.
" 152	An Act respecting the preservation of peace at Public Meetings.	The whole Act, except sec. 1, 2 & 3.
" 153	An Act respecting Prize-fighting.	The whole Act, except sec. 6, 7 & 10.
" 154	An Act respecting Perjury.	The whole Act, except sec. 4.
" 155	An Act respecting Escapes and Rescues.	The whole Act.
" 156	An Act respecting offences against Religion.	The whole Act.
" 157	An Act respecting offences against Public Morals and Public Convenience.	The whole Act, except sec. 8, sub-sec. 4 (as amended in 1893).
" 158	An Act respecting Gaming houses.	The whole Act, except sec. 9 & 10.
" 159	An Act respecting Lotteries, Betting and Pool-selling.	The whole Act.
" 160	An Act respecting Gambling in public conveyances.	The whole Act.
" 161	An Act respecting offences relating to the Law of Marriage.	The whole Act.

ACTS REPEALED—Continued.

ACTS REPEALED.	TITLE.	EXTENT OF REPEAL.
R. S. C. c. 162	An Act respecting offences against the Person.	The whole Act.
" 163	An Act respecting Libel.	The whole Act, except secs. 6 & 7.
" 164	An Act respecting Larceny and similar offences.	The whole Act.
" 165	An Act respecting Forgery.	The whole Act.
" 167	An Act respecting offences relating to the Coin.	The whole Act, except secs. 26 & 29 to 34 inclusive.
" 168	An Act respecting malicious injuries to Property.	The whole Act.
" 169	An Act respecting offences relating to the Army and Navy.	The whole Act, except sec. 9.
" 171	An Act respecting the protection of Property of Seamen in the Navy.	The whole Act.
" 172	An Act respecting Cruelty to Animals.	The whole Act, except sec. 7.
" 173	An Act respecting Threats, Intimidation and other offences.	The whole Act, except sec. 12 (s-s. 5).
" 174	An Act respecting Procedure in Criminal Cases.	The whole Act.
" 175	An Act respecting the summary administration of Criminal Justice.	The whole Act.
" 177	An Act respecting Juvenile Offenders.	The whole Act.
" 178	An Act respecting summary proceedings before Justices of the Peace.	The whole Act.
" 179	An Act respecting Recognizances.	The whole Act.
" 180	An Act respecting Fines and Forfeitures.	The whole Act.
" 181	An Act respecting Punishments, Pardons and the Commutation of Sentences.	The whole Act.
" 185	An Act respecting Actions against persons administering the Criminal Law.	The whole Act.
50-51 V. c. 33	An Act to amend the Indian Act.	Sec. 11.
" 40	An Act respecting Public Stores.	The whole Act.
" 42	An Act respecting the conveyance of liquors on board Her Majesty's Ships in Canadian Waters.	The whole Act.
" 45	An Act to amend the Act respecting offences against Public Morals and Public Convenience.	The whole Act.
" 49	An Act to amend the Revised Statutes, Chapter one hundred and seventy-three, respecting Threats, Intimidation and other offences.	The whole Act.
" 50	An Act to amend the Law respecting Procedure in Criminal Cases.	The whole Act.
51 V. c. 29	An Act respecting Railways.	Sec. 297.
" 40	An Act respecting the advertising of Counterfeit Money.	The whole Act.
" 41	An Act to amend the law relating to Fraudulent Marks on Merchandise.	The whole Act, except secs. 15, 16, 18, 22 & 23.
" 42	An Act respecting gaming in Stocks and Merchandise.	The whole Act.
" 43	An Act further to amend the Law respecting Procedure in Criminal Cases.	The whole Act.
" 44	An Act further to amend <i>The Criminal Procedure Act</i> .	The whole Act.
" 45	An Act to amend Chapter one hundred and seventy-eight of the Revised Statutes of Canada: <i>The Summary Convictions Act</i> .	The whole Act.
" 47	An Act to amend the Revised Statutes of Canada, Chapter one hundred and eighty-one, respecting Punishments, Pardons and the Commutation of Sentences.	The whole Act.
52 V. c. 22	An Act to amend the Revised Statutes, Chapter seventy-seven, respecting the safety of Ships.	Sec. 3.
" 25	An Act to amend the Revised Statutes respecting the North-west Mounted Police Force.	Sec. 4.
" 40	An Act respecting Rules of Court in relation to Criminal Matters.	The whole Act.

ACTS REPEALED—Continued.

ACTS REPEALED.	TITLE.	EXTENT OF REPEAL.
52 V. c. 41	An Act for the prevention and suppression of Combinations formed in restraint of Trade.	The whole Act, except secs. 4 & 5.
" 42	An Act respecting Corrupt Practices in Municipal Affairs.	The whole Act.
" 44	An Act to permit the conditional release of first offenders in certain cases.	The whole Act.
" 45	An Act to amend <i>The Summary Convictions Act</i> , Chapter one hundred and seventy-eight of the Revised Statutes, and the Act amending the same.	The whole Act.
" 46	An Act to amend <i>The Summary Trials Act</i> .	The whole Act.
" 47	An Act to make further provision respecting the Speedy Trial of certain Indictable Offences.	The whole Act.
53 V. c. 10	An Act to prevent the disclosure of official documents and information.	The whole Act.
" 31	An Act respecting Banks and Banking.	Sec. 63.
" 57	An Act further to amend the Criminal Law.	The whole Act, except secs. 1, 2, 6, 82, to end.
" 38	An Act to amend the Public Stores Act.	The whole Act.
54-55 V. c. 23	An Act respecting Frauds upon the Government.	The whole Act.

APPENDIX.

ACTS AND PARTS OF ACTS WHICH ARE NOT
AFFECTED BY THIS ACT.

R. S. C. CHAPTER 50.

An Act respecting the North-west Territories.

101. In this section—

(a) The expression “improved arm” means and includes all arms except smooth bore shot guns ;

(b) The expression “ammunition” means fixed ammunition or ball cartridge.

2. Every person who, in the territories,—

(a) Without the permission in writing (the proof of which shall be on him) of the Lieutenant-Governor, or of a commissioner appointed by him to give such permission, has in his possession or sells, exchanges, trades, barter or gives to, or with any person, any improved arm or ammunition, or—

(b) Having such permission, sells, exchanges, trades, barter or gives any such arm or ammunition to any person not lawfully authorized to possess the same,—

Shall, on summary conviction before a judge of the Supreme Court or two justices of the peace, be liable to a penalty not exceeding two hundred dollars, or to imprisonment for any term not exceeding six months, or to both.

3. All arms and ammunition which are in the possession of any person, or which are sold, exchanged, traded, bartered or given to or with any person in violation of this section, shall be forfeited to the Crown, and may be seized by any constable or other peace officer ; and any judge of the Supreme Court or justice of the peace may issue a search warrant to search for and seize the same, as in the case of stolen goods.

4. The Governor in Council may, from time to time, make regulations respecting :—

(a) The granting of permission to sell, exchange, trade, barter, give or possess arms or ammunition ;

(b) The fees to be taken in respect thereof ;

(c) The returns to be made respecting permissions granted ; and—

(d) The disposition to be made of forfeited arms and ammunition.

5. The provisions of this section respecting the possession of arms and ammunition shall not apply to any officer or man of Her Majesty's forces, of the Militia force, or of the North-west Mounted Police force.

6. The Governor in Council may, from time to time, declare by proclamation that upon and after a day therein named this section shall be in force in the territories, or in any place or places therein in such proclamation designated ; and upon and after such day but not before the provisions of this section shall take effect and be in force accordingly.

7. The Governor in Council may, in like manner, from time to time, declare this section to be no longer in force in any such place or places, and may again, from time to time, declare it to be in force therein.

8. All courts, judges and justices of the peace shall take judicial notice of any such proclamation.

R. S. C. CHAPTER 146.

An Act respecting Treason and other Offences against the Queen's Authority.

6. If any person, being a citizen or subject of any foreign state or country at peace with Her Majesty, is or continues in arms against Her Majesty, within Canada, or commits any act of hostility therein, or enters Canada with design or intent to levy war against Her Majesty, or to commit any felony therein, for which any person would, in Canada, be liable to suffer death, the Governor General may order the assembling of a militia general court-martial for the trial of such person, under *The Militia Act* ; and upon being found guilty by such court-martial of offending against the provisions of this section, such person shall be sentenced by such court-martial to suffer death, or such other punishment as the court awards.

7. Every subject of Her Majesty, within Canada, who levies war against Her Majesty, in company with any of the subjects or citizens of any foreign state or country then at peace with Her Majesty, or enters Canada in company with any such subjects or citizens with

intent to levy war on Her Majesty, or to commit any such act of felony as aforesaid, or who, with the design or intent to aid and assist, joins himself to any person or persons whomsoever, whether subjects or aliens, who have entered Canada with design or intent to levy war on Her Majesty, or to commit any such felony within the same, may be tried and punished by a militia court-martial, in the same manner as any citizen or subject of a foreign state or country at peace with Her Majesty may be tried and punished under the next preceding section.

R. S. C. CHAPTER 148.

An Act respecting the improper use of Firearms and other Weapons.

7. The court or justice before whom any person is convicted of any offence against the provisions of the preceding sections, shall impound the weapon for carrying which such person is convicted, and if the weapon is not a pistol, shall cause it to be destroyed; and if the weapon is a pistol, the court or justice shall cause it to be handed over to the corporation of the municipality in which the conviction takes place, for the public uses of such corporation.

2. If the conviction takes place where there is no municipality, the pistol shall be handed over to the Lieutenant-Governor of the province in which the conviction takes place, for the public uses thereof in connection with the administration of justice therein.

R. S. C. CHAPTER 149.

An Act respecting the Seizure of Arms kept for dangerous purposes.

5. All justices of the peace in and for any district county, city, town or place, in Canada, shall have concurrent jurisdiction as justices of the peace, with the justices of any other district, county, city, town or place, in all cases with respect to the carrying into execution the provisions of this Act, and with respect to all matters and things relating to the preservation of the public peace under this Act, as fully and effectually as if each of such justices was in the commission of the peace, or was *ex officio* a justice of the peace for each of such districts, counties, cities, towns or places.

7. The Governor in Council may, from time to time, by proclamation, suspend the operation of this Act in any province of Canada or in any particular district, county or locality specified in the proclamation; and from and after the period specified in any such proclamation, the powers given by this Act shall be suspended in such province, district, county or locality; but nothing herein contained shall prevent the Governor in Council from again declaring, by proclamation, that any such province, district, county or locality shall be again subject to this Act and the powers hereby given, and upon such proclamation this Act shall be revived and in force accordingly.

R. S. C. CHAPTER 151.

An Act respecting the Preservation of Peace in the vicinity of Public Works.

INTERPRETATION.

1. In this Act, unless the context otherwise requires,—

(a) The expression “this Act” means such section or sections thereof, as are in force, by virtue of any proclamation, in the place or places with reference to which the Act is to be construed and applied;

(b) The expression “commissioner” means a commissioner under this Act;

(c) The expression “weapon” includes any gun or other firearm, or air-gun or any part thereof, or any sword, sword-blade, bayonet, pike, pike-head, spear, spear-head, dirk, dagger, or other instrument intended for cutting or stabbing, or any steel or metal knuckles or other deadly or dangerous weapon, and any instrument or thing intended to be used as a weapon, and all ammunition which may be used with or for any weapon;

(d) The expression “intoxicating liquor” means and includes any alcoholic, spirituous, vinous, fermented or other intoxicating liquor, or any mixed liquor, a part of which is spirituous or vinous, fermented or otherwise intoxicating;

(e) The expression “district county or place,” includes any division of any province for the purposes of the administration of justice in the matter to which the context relates;

(f) The expression “public work” means and includes any railway, canal, road, bridge or other work of any kind, and any mining

operation constructed or carried on by the Government of Canada, or of any province of Canada, or by any municipal corporation, or by any incorporated company, or by private enterprise.

PROCLAMATION.

2. The Governor in Council may, as often as occasion requires, declare, by proclamation, that upon and after a day therein named, this Act, or any section or sections thereof, shall be in force in any place or places in Canada in such proclamation designated, within the limits or in the vicinity whereof any public work is in course of construction, or in such places as are in the vicinity of any public work, within which he deems it necessary that this Act, or any section or sections thereof, should be in force, and this Act, or any such section or sections thereof, shall, upon and after the day named in such proclamation, take effect within the places designated therein.

2. The Governor in Council may, in like manner, from time to time, declare this Act, or any section or sections thereof, to be no longer in force in any such place or places,—and may again, from time to time, declare this Act, or any section or sections thereof, to be in force therein.

3. No such proclamation shall have effect within the limits of any city.

4. All courts, magistrates and justices of the peace shall take judicial notice of every such proclamation.

WEAPONS.

3. On or before the day named in such proclamation, every person employed on or about any public work, to which the same relates, shall bring and deliver up, to some commissioner or officer appointed for the purposes of this Act, every weapon in his possession, and shall obtain from such commissioner or officer a receipt for the same.

4. Every weapon found in the possession of any person employed, as aforesaid, after the day named in any proclamation and within the limits designated in such proclamation, may be seized by any justice of the peace, commissioner, constable or other peace officer,—and shall be forfeited to the use of her Majesty.

5. Every one employed upon or about any public work, within the place or places in which this Act is then in force, who, upon or after the day named in such proclamation, keeps or has in his possession or under his care or control, within any such place, any

weapon, shall incur a penalty not exceeding four dollars and not less than two dollars for every such weapon found in his possession.

Section 117 of the code.

6. Every one who, for the purpose of defeating this Act, receives or conceals, or aids in receiving or concealing, or procures to be received or concealed, within any place in which this Act is at the time in force, any weapon belonging to or in the custody of any person employed on or about any public work, shall incur a penalty not exceeding one hundred dollars and not less than forty dollars, and a moiety of such penalty shall belong to the informer and the other moiety to Her Majesty, for the public uses of Canada.

Section 117 of the code.

7. Any commissioner or justice of the peace, constable or peace officer, or any person acting under a warrant, in aid of any constable or peace officer, may arrest and detain any person employed on any public work, found carrying any weapon, within any place in which this Act is, at the time, in force, at such time and in such manner as, in the judgment of such commissioner, justice of the peace, constable or peace officer, or person acting under a warrant, affords just cause of suspicion that it is carried for purposes dangerous to the public peace; and every one so employed, who so carries any such weapon, is guilty of a misdemeanour,—and the justice of the peace or commissioner arresting such person, or before whom he is brought under such a warrant, may commit him for trial for a misdemeanour, unless he gives sufficient bail for his appearance at the next term or sitting of the court before which the offence can be tried, to answer to any indictment to be then preferred against him.

8. Any commissioner appointed under this Act, or any justice of the peace having authority within the place in which this Act is at the time in force, upon the oath of a credible witness that he believes that any weapon is in the possession of any person or in any house or place contrary to the provisions of this Act, may issue his warrant to any constable or peace officer to search for and seize the same,—and he, or any person in his aid, may search for and seize the same in the possession of any person, or in any such house or place.

9. If admission to any such house or place is refused after demand such constable or peace officer, and any person in his aid, may enter the same by force, by day or by night, and seize any such weapon and deliver it to such commissioner; and unless the person in whose possession or in whose house or premises the same is found, within four days next after the seizure, proves to the satisfaction of such com-

missioner or justice of the peace that the weapon so seized was not in his possession nor in his house nor place contrary to the meaning of this Act, such weapon shall be forfeited to the use of Her Majesty.

10. All weapons declared forfeited under this Act shall be sold or destroyed under the direction of the commissioner by whom or by whose authority the same are seized, and the proceeds of such sale, after deducting necessary expenses, shall be received by such commissioner and paid over by him to the Minister of Finance and Receiver-General, for the public uses of Canada.

11. Whenever this Act ceases to be in force within the place where any weapon has been delivered and detained in pursuance thereof, or whenever the owner or person lawfully entitled to any such weapon satisfies the commissioner that he is about to remove immediately from the limits within which this Act is at the time in force, the commissioner may deliver up to the owner or person authorized to receive the same, any such weapon, on production of the receipt given for it.

12. Every commissioner under this Act shall make a monthly return to the Secretary of State of all weapons delivered to him, and by him detained under this Act.

INTOXICATING LIQUOR.

13. Upon and after the day named in such proclamation and during such period as such proclamation remains in force, no person shall, at any place within the limits specified in such proclamation, sell, barter or, directly or indirectly, for any matter, thing, profit or reward, exchange, supply or dispose of, any intoxicating liquor; nor expose, keep or have in possession any intoxicating liquor intended to be dealt with in any such way.

2. The provisions of this section shall not extend to any person selling intoxicating liquor by wholesale, and not retailing the same, if such person is a licensed distiller or brewer.

14. Every one who, by himself, his clerk, servant, agent or other person, violates any of the provisions of the next preceding section, is guilty of an offence against this Act, and, on a first conviction, shall be liable to a penalty of forty dollars and costs, and, in default of payment, to imprisonment for a term not exceeding three months,—and on every subsequent conviction, to the said penalty and the said imprisonment in default of payment, and also to further imprisonment for a term not exceeding six months.

Section 118 of the code adds, with or without hard labour.

15. Every clerk, servant, agent or other person who, being in the employment of, or on the premises of another person, violates or assists in violating any of the provisions of the thirteenth section of this Act, for the person in whose employment or on whose premises he is, shall be equally guilty with the principal offender, and shall be liable to the penalties mentioned in the next preceding section.

16. If any person makes oath or affirmation before any commissioner or justice of the peace, that he has reason to believe, and does believe that any intoxicating liquor with respect to which a violation of the provisions of the thirteenth section of this Act has been committed or is intended to be committed is, within the limits specified in any proclamation by which this Act has been proclaimed to be in force, on board of any steamboat, vessel, boat, canoe, raft or other craft, or in or about any building or premises, or in any carriage, vehicle or other conveyance, or at any place, the commissioner or justice of the peace shall issue a search warrant to any sheriff, police officer, constable or bailiff who shall forthwith proceed to search the steamboat, vessel, boat, canoe, raft, other craft, building, premises, carriage, vehicle, conveyance or place described in such search warrant; and if any intoxicating liquor is found therein or thereon the person executing such search warrant shall seize the intoxicating liquor and the barrels, casks, jars, bottles or other packages in which it is contained and shall keep it and them secure until final action is had thereon.

2. No dwelling-house in which, or in part of which or on the premises whereof, a shop or a bar is not kept, shall be searched, unless the said informant also makes oath or affirmation that some offence in violation of the provisions of the thirteenth section of this Act has been committed therein or therefrom within one month next preceding the time of making his said information for a search warrant.

3. The owner, keeper or person in possession of the intoxicating liquor so seized, if he is known to the officer seizing the same, shall be summoned forthwith by the commissioner or justice of the peace who issued the search warrant to appear before such commissioner or justice of the peace; and if he fails so to appear, or if it appears to the satisfaction of such commissioner or justice of the peace that a violation of the provisions of the thirteenth section of this Act has been committed or is intended to be committed, with respect to such intoxicating liquor, it shall be declared forfeited, with any package in which it is contained, and shall be destroyed by authority of the written order to that effect of such commissioner or justice, and in his presence or in the presence of some person appointed by him to witness

the destruction thereof ; and the commissioner or justice or the person so appointed by him, and the officer by whom the said intoxicating liquor has been destroyed, shall jointly attest, in writing upon the back of the said order, the fact that it has been destroyed.

4. The owner, keeper or person in possession of any intoxicating liquor seized and forfeited under the provisions of this section may be convicted of an offence against the thirteenth section of this Act without any further information laid or trial had, and shall be liable to the penalties mentioned in the fourteenth section of this Act.

17. If the owner, keeper or possessor of intoxicating liquor seized under the next preceding section is unknown to the officer seizing the same, it shall not be condemned and destroyed until the fact of such seizure, with the number and description of the packages, as near as may be, has been advertised for two weeks, by posting up a written or a printed notice and description thereof, in at least three public places of the place where it was seized.

2. If it is proved within such two weeks, to the satisfaction of the commissioner or justice by whose authority such intoxicating liquor was seized, that with respect to such intoxicating liquor no violation of the provisions of the thirteenth section of this Act has been committed or is intended to be committed, it shall not be destroyed, but shall be delivered to the owner, who shall give his receipt therefor in writing upon the back of the search warrant, which shall be returned to the commissioner or justice who issued the same ; but if, after such advertisement as aforesaid, it appears to such commissioner or justice that a violation of the provisions of the thirteenth section of this Act has been committed or is intended to be committed, then such intoxicating liquor, with any package in which it is contained, shall be forfeited and destroyed, according to the provisions of the next preceding section.

18. Any payment or compensation, whether in money or securities for money, labour or property of any kind, for intoxicating liquor sold, bartered, exchanged, supplied or disposed of, contrary to the provisions of the thirteenth section of this Act, shall be held to have been criminally received without consideration, and against law, equity and good conscience, and the amount or value thereof may be recovered from the receiver by the person making, paying or furnishing such payment or compensation ; and all sales, transfers, conveyances, liens and securities of every kind, which either in whole or in part have been made or given for or on account of intoxicating liquor sold, bartered, exchanged, supplied, or disposed of contrary to the provisions of the thirteenth section of this Act, shall be void

against all persons, and no right shall be acquired thereby ; and no action of any kind shall be maintained, either in whole or in part, for or on account of intoxicating liquor sold, bartered, exchanged, supplied or disposed of, contrary to the provisions of the said section.

19. In any prosecution under this Act for any offence with respect to intoxicating liquor, it shall not be necessary that any witness should depose directly to the precise description of the liquor with respect to which the offence has been committed, or to the precise consideration therefor, or to the fact of the offence having been committed with his participation or to his own personal and certain knowledge ; but the commissioner or justice of the peace trying the case, so soon as it appears to him that the circumstances in evidence sufficiently establish the offence complained of, shall put the defendant on his defence, and in default of such evidence being rebutted, shall convict the defendant accordingly.

GENERAL PROVISIONS.

20. Any commissioner or justice of the peace may hear and determine, in a summary manner, any case arising within his jurisdiction under this Act ; and every person making complaint against any other person for violating this Act, or any provision thereof, before such commissioner or justice, may be admitted as a witness ; and the commissioner or justice of the peace before whom the examination or trial is had, may, if he thinks there was probable cause for the prosecution, order that the defendant shall not recover costs, although the prosecution fails.

21. All the provisions of every law respecting the duties of justices of the peace in relation to summary convictions and orders, and to appeals from such convictions, and for the protection of justices of the peace when acting as such, or to facilitate proceedings by or before them in matters relating to summary convictions and orders, shall, in so far as they are not inconsistent with this Act, apply to every commissioner or justice of the peace mentioned in this Act or empowered to try offenders against this Act ; and every such commissioner shall be deemed a justice of the peace within the meaning of any such law, whether he is or is not a justice of the peace for other purposes.

22. On the trial of any proceeding, matter or question under this Act, the person opposing or defending, and the wife or husband of such person, shall be competent to give evidence.

23. No action or other proceeding, warrant judgment, order or other instrument or writing, authorized by this Act or necessary to

carry out its provisions, shall be held void or be allowed to fail for defect of form.

24. Every action brought against any commissioner or justice of the peace, constable, peace officer or other person, for anything done in pursuance of this Act, shall be commenced within six months next after the alleged cause of action arises ; and the venue shall be laid or the action instituted in the district or county or place where the cause of action arose ; and the defendant may plead the general issue and give this Act and the special matter in evidence ; and if such action is brought after the time limited, or the venue is laid or the action brought in any other district, county or place than as above prescribed, the judgment or verdict shall be given for the defendant ; and in such case, or if the judgment or verdict is given for the defendant on the merits, or if the plaintiff becomes nonsuited or discontinues after appearance is entered, or has judgment rendered against him on demurrer, the defendant shall be entitled to recover double costs.

R.S.C. CHAPTER 152.

An Act respecting the Preservation of Peace at Public Meetings.

1. Any justice of the peace within whose jurisdiction any public meeting is appointed to be held, may demand, have and take of and from any person attending such meeting, or on his way to attend the same, any offensive weapon, such as firearms, swords, staves, bludgeons, or the like, with which any such person is so armed, or which any such person has in his possession ; and every such person who, upon such demand, declines or refuses to deliver up, peaceably and quietly, to such justice of the peace, any such offensive weapon as aforesaid, is guilty of a misdemeanour, and such justice may thereupon record the refusal of such person to deliver up such weapon, and adjudge him to pay a penalty not exceeding eight dollars,—which penalty shall be levied in like manner as penalties are levied under the *Act respecting summary proceedings before Justices of the Peace*, or such person may be proceeded against by indictment or information, as in other cases of misdemeanour ; but such conviction shall not interfere with the power of such justice, or any other justice of the peace, to take such weapon, or cause the same to be taken from such person, without his consent and against his will, by such force as is necessary for that purpose.

2. Upon reasonable request to any justice of the peace, to whom any such weapon has been peaceably and quietly delivered as aforesaid, made on the day next after the meeting has finally dispersed, and not before, such weapon shall, if of the value of one dollar or upwards be returned by such justice of the peace to the person from whom the same was received.

3. No such justice of the peace shall be held liable to return any such weapon, or make good the value thereof, if the same, by unavoidable accident, has been actually destroyed or lost out of the possession of such justice without his wilful default.

R. S. C. CHAPTER 153.

An Act respecting Prize-fighting.

6. If, at any time the sheriff of any county, place or district in Canada, any chief of police, any police officer, or any constable, or other peace officer, has reason to believe that any person within his bailiwick or jurisdiction is about to engage as principal in any prize-fight within Canada, he shall forthwith arrest such person and take him before some person having authority to try offences against this Act, and shall forthwith make complaint in that behalf, upon oath, before such person; and thereupon such person shall inquire into the charge, and if he is satisfied that the person so brought before him was, at the time of his arrest, about to engage as a principal in a prize-fight, he shall require the accused to enter into a recognizance, with sufficient sureties, in a sum not exceeding five thousand dollars and not less than one thousand dollars, conditioned that the accused will not engage in any such fight within one year from and after the date of such arrest; and in default of such recognizance, the person before whom the accused has been brought shall commit the accused to the *gaol* of the county, district or city within which such inquiry takes place, or if there is no common *gaol* there, then to the common *gaol* which is nearest to the place where such inquiry is had, there to remain until he gives such recognizance with such sureties.

7. If any sheriff has reason to believe that a prize-fight is taking place or is about to take place within his jurisdiction as such sheriff, or that any persons are about to come into Canada at a point within his jurisdiction, from any place outside of Canada, with intent to engage in, or to be concerned in, or to attend any prize-fight within Canada, he shall forthwith summon a force of the inhabitants of his district or county sufficient for the purpose of suppressing and pre-

venting such fight,—and he shall, with their aid, suppress and prevent the same, and arrest all persons present thereat, or who come into Canada as aforesaid, and shall take them before some person having authority to try offences against this Act, to be dealt with according to law, and fined or imprisoned, or both, or compelled to enter into recognizances with sureties, as hereinbefore provided, according to the nature of the case.

10. Every judge of a superior court or of a county court, judge of the sessions of the peace, stipendiary magistrate, police magistrate, and commissioner of police of Canada, shall, within the limits of his jurisdiction as such judge, magistrate or commissioner, have all the powers of a justice of the peace with respect to offences against this Act.

R. S. C. CHAPTER 154.

An Act respecting Perjury.

See p. 98 ante.

R. S. C. CHAPTER 157.

An Act respecting Offences against Public Morals and Public Convenience.

8. * * * * *

(4) If provision is made therefor by the laws of the province in which the conviction takes place, any such loose, idle or disorderly person may, instead of being committed to the common gaol or other public prison, be committed to any house of industry or correction, alms house, work house or reformatory prison.

R. S. C. CHAPTER 167.

An Act respecting Offences relating to the Coin.

29. Any two or more justices of the peace, on the oath of a credible person, that any copper or brass coin has been unlawfully manufactured or imported, shall cause the same to be seized and detained, and shall summon the person in whose possession the same is found, to appear before them; and if it appears to their satisfaction,

on the oath of a credible witness, other than the informer, that such copper or brass coin has been manufactured or imported in violation of this Act, such justice shall declare the same forfeited, and shall place the same in safe keeping to await the disposal of the Governor General, for the public uses of Canada.

30. If it appears, to the satisfaction of such justices, that the person in whose possession such copper or brass coin was found, knew the same to have been so unlawfully manufactured or imported, they may condemn him to pay the penalty aforesaid with costs, and may cause him to be imprisoned for a term not exceeding two months, if such penalty and costs are not forthwith paid.

31. If it appears, to the satisfaction of such justices, that the person in whose possession such copper or brass coin was found was not aware of it having been so unlawfully manufactured or imported, the penalty may, on the oath of any one credible witness, other than the plaintiff, be recovered, from the owner thereof, by any person who sues for the same in any court of competent jurisdiction.

32. Any officer of Her Majesty's customs may seize any copper or brass coin imported or attempted to be imported into Canada in violation of this Act, and may detain the same as forfeited, to await the disposal of the Governor General, for the public uses of Canada.

33. Every one who utters, tenders or offers in payment any copper or brass coin, other than current copper coin, shall forfeit double the nominal value thereof.

2. Such penalty may be recovered, with costs, in a summary manner, on the oath of one credible witness, other than the informer, before any justice of the peace, who, if such penalty and costs are not forthwith paid, may cause the offender to be imprisoned for a term not exceeding eight days.

34. A moiety of any of the penalties imposed by any of the five sections next preceding, but not the copper or brass coins forfeited under the provisions thereof, shall belong to the informer or person who sues for the same, and the other moiety shall belong to Her Majesty, for the public uses of Canada.

R.S.C. CHAPTER 169.

An Act respecting Offences relating to the Army and Navy.

9. One moiety of the amount of any penalty recovered under any of the preceding sections shall be paid over to the prosecutor or

person by whose means the offender has been convicted, and the other moiety shall belong to the Crown.

R.S.C. CHAPTER 172.

An Act respecting Cruelty to Animals.

7. Every pecuniary penalty recovered with respect to any such offence shall be applied in the following manner, that is to say: one moiety thereof to the corporation of the city, town, village, township, parish, or place in which the offence was committed, and the other moiety, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the justices of the peace seems proper.

51 VICT. CHAPTER 41.

An Act to amend the Law relating to Fraudulent Marks on Merchandise.

15. Any goods or things forfeited under any provision of this Act, may be destroyed or otherwise disposed of in such a manner as the court, by which the same are declared forfeited, directs; and the court may, out of any proceeds realized by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

16. On any prosecution under this Act the court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

18. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

22. The importation of any goods which, if sold, would be forfeited under the foregoing provisions of this Act, and of goods manufactured in any foreign state or country which bear any name or trade mark which is or purports to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom or in Canada, is hereby prohibited, unless such name or trade mark is accompanied by a definite indication of the foreign state or country in which the goods were made or produced; and any person who imports or attempts to import any such goods shall be liable to a penalty of not more than five hundred dollars, nor less than two hundred dollars, recoverable on summary conviction, and the goods so imported or attempted to be imported shall be forfeited and may be seized by any officer of the Customs and dealt with in like manner as any goods or things forfeited under this Act.

2. Whenever there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom or in Canada, such name, unless it is accompanied by the name of the state or country in which it is situate, shall, unless the Minister of Customs decides that the attaching of such name is not calculated to deceive (of which matter the said Minister shall be the sole judge) be treated, for the purposes of this section, as if it was the name of a place in the United Kingdom or in Canada.

3. The Governor in Council may, whenever he deems it expedient in the public interest, declare that the provisions of the two sub-sections next preceding shall apply to any city or place in any foreign state or country; and after the publication in the *Canada Gazette* of the Order in Council made in that behalf, such provisions shall apply to such city or place in like manner as they apply to any place in the United Kingdom or in Canada, and may be enforced accordingly.

4. The Governor in Council may, from time to time, make regulations, either general or special, respecting the detention and seizure of goods, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and seizure, and may, by such regulations, determine the information, notices and security to be given, and the evidence necessary for any of the purposes of this section, and the mode of verification of such evidence.

5. The regulations may provide for the reimbursing by the informant to the Minister of Customs of all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent upon such detention.

6. Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

7. All such regulations shall be published in the *Canada Gazette* and shall have force and effect from the date of such publication.

23. This Act shall be substituted for chapter one hundred and sixty-six of the Revised Statutes, respecting the fraudulent marking of merchandise, which is hereby repealed.

52 VICT. CHAPTER 41.

An Act for the Prevention and Suppression of Combinations formed in Restraint of Trade.

4. Where an indictment is found against any person for offences provided against in this Act, the defendant or person accused shall have the option to be tried before the judge presiding at the court at which such indictment is found, or the judge presiding at any subsequent sitting of such court, or at any court where the indictment comes on for trial, without the intervention of a jury; and in the event of such option being exercised the proceedings subsequent thereto shall be regulated, in so far as may be applicable, by *The Speedy Trials Act*.

5. An appeal shall lie from any conviction under this Act by the judge without the intervention of a jury to the highest court of appeal in criminal matters in the province where such conviction shall have been made, upon all issues of law and fact; and the evidence taken in the trial shall form part of the record in appeal, and for that purpose the court before which the case is tried shall take note of the evidence and of all legal objections thereto.

53 VICT. CHAPTER 37.

An Act further to Amend the Criminal Law.

ESCAPES AND RESCUES.

1. Section nine of chapter one hundred and fifty-five of the Revised Statutes of Canada, *An Act respecting Escapes and Rescues*, is hereby repealed and the following section is substituted therefor:—

"9. Every one who, being sentenced to imprisonment or detention in, or being ordered to be detained in, any reformatory prison, reformatory school, industrial refuge, industrial home or industrial school, escapes or attempts to escape therefrom, is guilty of a misdemeanour, and may be dealt with as follows :—

"The offender may, at any time, be apprehended without warrant and brought before any magistrate, who, upon proof of his identity,—

"(a) In the case of an escape or attempt to escape from a reformatory prison or a reformatory school, shall remand him thereto for the remainder of his original term of imprisonment or detention ; or,—

"(b) In the case of an escape or attempt to escape from an industrial refuge, industrial home, or industrial school,—

"(1) May remand him thereto for the remainder of his original term of imprisonment or detention ; or,—

"(2) If the officer in charge of such refuge, home or school certifies in writing that the removal of such offender to a place of safer or stricter imprisonment is desirable, and if the governing body of such refuge, home or school applies for such removal, and if sufficient cause therefor is shown to the satisfaction of such magistrate, may order the offender to be removed to and to be kept imprisoned, for the remainder of his original term of imprisonment or detention, in any reformatory prison or reformatory school in which by law such offender may be imprisoned for a misdemeanour,—and when there is no such reformatory prison or reformatory school, may order the offender to be removed to and to be so kept imprisoned in any other place of imprisonment to which the offender may be lawfully committed ;

"(c) And in any case mentioned in the preceding paragraphs (a) and (b) of this sub-section, or if the term of his imprisonment or detention has expired, the magistrate may, after conviction, sentence the offender to such additional term of imprisonment or detention, as the case may be, not exceeding one year, as to such magistrate seems a proper punishment for the escape or attempt to escape."

2. Every one who, being sentenced to imprisonment or detention in, or being ordered to be detained in any industrial refuge, industrial home or industrial school, by reason of incorrigible or vicious conduct, or with reference to the general discipline of the institution, is beyond the control of the officer in charge of such institution, is guilty of a misdemeanour, and may be dealt with as follows :—

(a) The offender may, at any time before the expiration of his term of imprisonment or detention, be brought without warrant before any magistrate, and if the officer in charge of such refuge, home or school certifies in writing that the removal of such offender to a place of stricter imprisonment is desirable, and if the governing body of such refuge, home or school applies for such removal, and if sufficient cause therefor is shown to the satisfaction of such magistrate, he may order the offender to be removed to and to be kept imprisoned, for the remainder of his original term of imprisonment or detention, in any reformatory prison or reformatory school in which by law such offender may be imprisoned for a misdemeanour; and when there is no such reformatory prison or school the magistrate may order the offender to be removed to and to be so kept imprisoned in any other place of imprisonment to which the offender may be lawfully committed;

(b) The magistrate may, after conviction, sentence the offender to such additional term of imprisonment, not exceeding one year, as to such magistrate seems a proper punishment for the incorrigible conduct of the offender.

PUBLIC AND REFORMATORY PRISONS.

Certified Industrial Schools, Ontario.

32. The Governor General, by warrant under his hand, may at any time in his discretion (the consent of the Provincial Secretary of Ontario having been first obtained), cause any boy who is imprisoned in a reformatory or gaol in that province, under sentence for an offence against a law of Canada, and who is certified by the court, judge or magistrate, by whom he was tried to have been, in the opinion of such court, judge or magistrate, at the time of his trial, of or under the age of thirteen years, to be transferred for the remainder of his term of imprisonment to a certified industrial school in the province.

33. Where, under any law of Canada, any boy is convicted in Ontario, whether summarily or otherwise, of any offence punishable by imprisonment, and the court, judge, stipendiary or police magistrate by whom he is so convicted is of opinion that such boy does not exceed the age of thirteen years, such court, judge or magistrate may sentence such boy to imprisonment in a certified industrial school for any term not exceeding five years and not less than two years: Provided, that no boy shall be sentenced to any such school unless public notice has been given in the *Ontario Gazette* and has not been countermanded, that such school is ready to receive and maintain boys sentenced under laws of the Dominion; Provided also, that no

such boy shall be detained in any certified industrial school beyond the age of seventeen years.

Halifax Industrial School.

34. Section sixty-one of chapter one hundred and eighty-three of the Revised Statutes, intituled *An Act respecting Public and Reformatory Prisons*, is hereby repealed and the following substituted therefor :—

“**61.** Whenever any boy, who is a Protestant and a minor apparently under the age of sixteen years, is convicted in Nova Scotia of any offence for which by law he is liable to imprisonment, the judge, stipendiary magistrate, justice or justices by whom he is so convicted may sentence such boy to be detained in the Halifax Industrial School for any term not exceeding five years, and not less than two years.”

35. Section sixty-two of the said Act is hereby repealed and the following substituted therefor :—

“**62.** No such sentence shall be pronounced unless or until provision has been made by the municipality within which such conviction is had, out of its funds, for the support of boys so sentenced, at the rate of not less than sixty dollars per annum for each boy.”

St. Patrick's Home, Halifax.

36. Section sixty-five of the said Act is hereby repealed and the following substituted therefor :—

“**65.** Whenever any boy, who is a Roman Catholic and apparently under the age of sixteen years, is convicted in Nova Scotia of any offence for which by law he is liable to imprisonment, the judge, stipendiary magistrate, justice or justices by whom he is so convicted may sentence such boy to be detained in Saint Patrick's Home at Halifax for any term not exceeding five years, and not less than two years ; but no such sentence shall be pronounced unless or until provision has been made by the municipality within which such conviction is had, out of its funds, for the support of boys so sentenced at the rate of not less than sixty dollars per annum for each boy.”

37. Section sixty-six of the said Act is hereby repealed and the following substituted therefor :—

"66. The superintendent, or head of the said home, may at any time notify the mayor, warden or other chief magistrate of any municipality, that no prisoners, beyond those already under sentence in such home, will be received therein; and after such notification no such sentence shall be pronounced in such municipality until notice has been received by such mayor, warden or chief magistrate, from the said superintendent or head, that prisoners will again be received in the said home."

38. The six preceding sections shall not, nor shall any of them, come into force until the same shall have been proclaimed by the Governor in Council.

39. The said Act is hereby further amended by adding at the end thereof the following sections:—

"PART VI.

"MANITOBA.

"Manitoba Reformatory for Boys.

"78. If any boy, who, at the time of his trial, appears to the court to be under the age of sixteen years, is convicted of any offence for which a sentence of imprisonment for a period of three months or longer, but less than five years, may be imposed upon an adult convicted of the like offence, and the court before which such boy is convicted is satisfied that a due regard for the material and moral welfare of the boy manifestly requires that he should be committed to the Manitoba reformatory for boys, then such court may sentence the boy to be imprisoned in such reformatory for such term as the court thinks fit, not being greater than the term of imprisonment which could be imposed upon an adult for the like offence, and may further sentence such boy to be kept in such reformatory for an indefinite time after the expiration of such fixed term; Provided, that the whole period of confinement in such reformatory shall not exceed five years from the commencement of his imprisonment.

"79. If any boy, apparently under the age of sixteen years, is convicted of any offence, punishable by law on summary conviction, and thereupon is sentenced and committed to prison in any common gaol for a period of fourteen days at the least, any judge of any one of the superior courts, or any judge of a county court, in any case occurring within his county, may examine and inquire into the circumstances of such case and conviction, and when he considers the

material and moral welfare of the boy requires such sentence, he may, as an additional sentence for such offence, sentence such boy to be sent either forthwith or at the expiration of his imprisonment in such gaol, to such reformatory, to be there detained for the purpose of his industrial and moral education for an indefinite period, not exceeding in the whole five years, from the commencement of his imprisonment in the common gaol.

80. Every boy so sentenced shall be detained in such reformatory until the expiration of the fixed term, if any, of his sentence, unless sooner discharged by lawful authority, and thereafter shall, subject to the provisions hereof and to any regulations made as hereinafter provided, be detained in such reformatory for a period not to exceed five years from the commencement of his imprisonment, for the purpose of his industrial and moral education.

81. A copy of the sentence of the court, duly certified by the proper officer, or the warrant or order of the judge or other magistrate by whom any boy is sentenced to confinement in such reformatory, shall be a sufficient authority to the sheriff, constable or other officer who is directed, verbally or otherwise, so to do, to convey such boy to the common gaol of the county where such sentence is pronounced, and for the gaoler of such gaol to receive and detain such boy, until some person, lawfully authorized, requires the delivery of such boy for removal to the reformatory.

82. If any boy sentenced to be confined in such reformatory is in such a weak state of health that he cannot safely or conveniently be removed to the reformatory, he may be detained in the common gaol or other place of confinement in which he is, until he is sufficiently recovered to be safely and conveniently removed to the reformatory.

83. No boy shall be discharged from such reformatory at the termination of his term of confinement, if then labouring under any contagious or infectious disease, or under any acute or dangerous illness, but he shall be permitted to remain in such reformatory until he recovers from such disease or illness: Provided that any boy remaining in such reformatory for any such cause shall be under the same discipline and control as if his term was still unexpired.

84. Any sheriff or other person having the custody of any offender sentenced to imprisonment in the said reformatory, may detain the offender in the common gaol of the county or district in which such offender is sentenced, or other place of confinement in

which such offender is, until some person lawfully authorized in that behalf requires such offender's delivery for the purpose of being conveyed to such reformatory.

"**35.** Whenever the time of any offender's sentence in such reformatory, under any law within the legislative authority of the Parliament of Canada, expires on a Sunday, such offender shall be discharged on the previous Saturday, unless such offender desires to remain until the Monday following."

40. The provisions of this Act in respect to the Manitoba reformatory for boys shall not come into force until the same shall have been proclaimed by the Governor in Council.