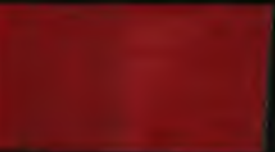


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THE

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# REVISED STATUTES

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OF

## ONTARIO, 1897,

### VOLUME III.

BEING

A CONSOLIDATION AND REVISION OF CERTAIN IMPERIAL  
STATUTES RELATING TO PROPERTY AND CIVIL RIGHTS  
INCORPORATED INTO THE LAW OF ONTARIO  
BY VIRTUE OF PROVINCIAL LEGISLATION  
UP TO THE END OF THE YEAR 1897,

WITH

### AN APPENDIX,

CONTAINING

- (1) IMPERIAL CONSTITUTIONAL STATUTES.
- (2) IMPERIAL STATUTES OF GENERAL PRACTICAL UTILITY,  
PASSED SINCE 15 OCTOBER, 1792,  
IN FORCE IN ONTARIO, *EX PROPRIO VIGORE*.
- (3) *THE HABEAS CORPUS ACT*.

AND

- (4) A TABLE OF IMPERIAL STATUTES IN FORCE IN CANADA *EX PROPRIO VIGORE*, AT THE END OF THE YEAR 1901.



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*APPENDIX.*

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APPENDIX



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**THE REVISED STATUTES OF ONTARIO,  
1897.**

**VOLUME III.**

**APPENDIX.**

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# APPENDIX.

## PART I.

### IMPERIAL CONSTITUTIONAL ACTS.

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of Canada.

### 3 CHARLES I.

#### Chapter 1 (a.)

(Commonly called “*THE PETITION OF RIGHT.*”)

The Petition exhibited to His Majesty by the Lords Spiritual and Temporal and Commons in this present Parliament assembled concerning divers rights and liberties of the subject; with the King's Majesty's Royal answer thereto in full Parliament.

(A.D. 1627.)

(See *Imperial Revised Statutes, volume 1.*)

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(a) *Note—This is one of the Constitutional Acts of the Imperial Parliament in force in Ontario, but is not considered to be of such practical importance as to require it to be printed.*

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# 1 WILLIAM & MARY. (Session 2.)

## Chapter 2. (a.)

(Commonly called "THE BILL OF RIGHTS.")

An Act declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown.

(A.D. 1688.)

**W**HEREAS

The subject's rights.

And thereupon the said Lords Spiritual and Temporal and commons being now assembled in a full and free representative of this nation for the vindicating and asserting their ancient rights and liberties declare:—

Suspending power.

That the pretended power of suspending of laws, or the execution of laws by regal authority, without consent of Parliament is illegal.

Late dispensing power.

That the pretended power of dispensing with laws, or the execution of laws by regal authority as it hath been assumed and exercised of late is illegal.

Ecclesiastical courts illegal.

That the commission for erecting the late court of commissioners for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious.

Levying money.

That levying money for or to the use of the Crown by pretence of prerogative without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal.

Right to petition.

That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.

Standing army.

That the raising or keeping a standing army within the Kingdom in time of peace, unless it be with consent of Parliament, is against law.

Freedom of election.  
Freedom of speech.

That election of members of Parliament ought to be free.  
That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament.

(a) Note—This is one of the Constitutional Acts of the Imperial Parliament in force in Ontario, but only such parts of it are printed as are deemed to be of practical importance in Ontario.

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Excessive bail.

That jurors ought to be duly impaneled and returned Juries.

\* \* \* \*

That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void. Grants of forfeitures.

And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliaments ought to be held frequently. Frequent Parliaments.

And they do claim, demand, and insist upon all and singular the premises as their undoubted rights and liberties, and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in any wise to be drawn hereafter into consequence or example. The said rights claimed.

\* \* \* \*

Now in pursuance of the premises the said Lords Spiritual and Temporal, and Commons, in Parliament assembled for the ratifying, confirming and establishing the said declaration and the articles, clauses, matters, and things therein contained by the force of a law made in due form by authority of Parliament, do pray that it may be declared and enacted, that all and singular the rights and liberties asserted and claimed in the said declaration are the true, ancient, and indubitable rights, and liberties of the people of this Kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said declaration. And all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come. \* \* \* All which their Majesties are contented and pleased shall be declared, enacted, and established, by authority of this present Parliament, and shall stand, remain and be the law of this realm for ever. And the same are by their said Majesties by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in Parliament assembled, and by the authority of the same declared, enacted, and established, accordingly. Subjects' liberties to be allowed

and ministers hereafter to serve according to the same.

King's and Queen's assent.

2. And be it further declared and enacted by the authority aforesaid, that from and after this present session of Parliament no dispensation by *non obstante* of, or to, any statute or any part thereof, shall be allowed, but that the same shall be held void and of no effect, except a dispensation be allowed of in such statute, and except in such cases as shall be specially provided for by one or more bill or bills to be passed during this present session of Parliament. Non obstante made void.

Exception.

\* \* \* \*

[www.libtool.ca](http://www.libtool.ca) 12-13 WILLIAM 3.

### Chapter 2 (a).

(Commonly called "THE ACT OF SETTLEMENT.")

An Act for the further limitation of the Crown and better securing the Rights and Liberties of the Subject.

(A.D. 1700-1701.)

(See *Imperial Revised Statutes*, Vol. 1.)

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### 14 GEORGE III, Chapter 83.

(Commonly called "THE QUEBEC ACT.")

An Act for making more effectual Provision for the Government of the Province of Quebec in North America.

(22nd June, A.D. 1774.)

Preamble.

WHEREAS, his Majesty, by his Royal Proclamation, bearing date the seventh day of October, in the third year of his reign, thought fit to declare the provisions which had been made in respect to certain countries, territories and islands in America, ceded to his Majesty by the definitive treaty of peace concluded at Paris on the tenth day of February, one thousand seven hundred and sixty-three: And whereas, by the arrangements made by the said Royal Proclamation, a very large extent of country, within which there were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said treaty, was left without any provision being made for the administration of civil government therein; and certain parts of the territory of Canada, where sedentary fisheries had been established and carried on by the subjects of France, inhabitants of the said Province of Canada, under grants and concessions from the government thereof, were annexed to the Government of Newfoundland, and thereby subjected to regulations inconsistent

The territories, islands

(a) *This Act is one of the Constitutional Acts of the Imperial Parliament in force in Ontario, but its provisions relate principally to establishing the succession to the Crown, and it is not thought to be of such general practical utility as to require it to be printed.*

with the nature of such fisheries : May it therefore please your most excellent Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all the territories, islands and countries in North America belonging to the Crown of Great Britain, bounded on the south by a line from the Bay of Chaleurs, along the high lands which divide the rivers that empty themselves into the River Saint Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of the River Connecticut, keeping the same latitude directly west through the Lake Champlain, until, in the same latitude, it meets the River St. Lawrence; from thence up the eastern bank of the said river to the Lake Ontario; thence through the Lake Ontario, and the river commonly called Niagara; and thence along by the eastern and south-eastern bank of Lake Erie, following the said bank, until the same shall be intersected by the northern boundary granted by the charter of the Province of Pennsylvania, in case the same shall be so intersected; and from thence along the said northern and western boundaries of the said Province, until the said western boundary strike the Ohio; but in case the said bank of the said lake shall not be found to be so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said Province of Pennsylvania, and thence, by a right line, to the said north-western angle of the said Province; and thence along the western boundary of the said Province, until it strike the River Ohio; and along the bank of the said river, westward, to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay; and also all such territories, islands and countries which have, since the tenth of February one thousand seven hundred and sixty-three, been made part of the Government of Newfoundland, be, and they are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the seventh of October, one thousand seven hundred and sixty-three.

and countries in North America belonging to Great Britain, north of a certain line.

annexed to Province of Quebec.

2. Provided always, that nothing herein contained relative to the boundary of the Province of Quebec shall in any wise affect the boundaries of any other colony.

Not to affect the boundaries of any other colony.

3. (*Repealed by 35-36 Vict. c. 63; S.L.R. Act No. 1, 1872.*)

4. (*Repealed by 35-36 Vict. c. 63; S.L.R. Act No. 1, 1872.*)

5. And for the more perfect security and ease of the minds of the inhabitants of the said province, it is hereby declared that His Majesty's subjects professing the religion of the Romish re-

Inhabitants of Quebec may profess the Romish re-

ligion, subject to the King's supremacy, as by Act 1, Eliz., (c. 1):

and the clergy enjoy their accustomed dues.

Church of Rome of and in the said Province of Quebec may have, hold and enjoy the free exercise of the religion of the Church of Rome; subject to the King's supremacy, declared and established by an Act made in the first year of the reign of Queen Elizabeth, over all the dominions and countries which then did or thereafter should belong to the Imperial Crown of this realm; and that the clergy of the said church may hold, receive and enjoy their accustomed dues and rights, with respect to such persons only as shall profess the said religion.

6. (Repealed by 35-36 Vict. 63; S.L.R. Act No. 1, 1872.)

7. (Repealed by 35-36 Vict. c. 3; S.L.R. Act No. 1, 1872.)

His Majesty's Canadian subjects (religious orders excepted) may hold all their possessions, etc. as heretofore.

8. And be it further enacted by the authority aforesaid, that all his Majesty's Canadian subjects within the Province of Quebec, the religious orders and communities only excepted, may also hold and enjoy their property and possessions, together with all customs and usages relative thereto, and all other their civil rights, in as large, ample, and beneficial manner, as if the said proclamation, commissions, ordinances, and other acts and instruments, had not been made, and as may consist with their allegiance to his Majesty, and subjection to the Crown, and Parliament, of Great Britain; and that in all matters of controversy relative to property and civil rights resort shall be had to the laws of Canada as the rule for the decision of the same; and all causes that shall hereafter be instituted in any of the Courts of justice to be appointed within and for the said Province by his Majesty, his heirs and successors, shall, with respect to such property and rights, be determined agreeably to the said laws and customs of Canada, until they shall be varied or altered by any ordinances that shall from time to time be passed in the said Province by the Governor, Lieutenant-Governor or Commander in chief, for the time being, by and with the advice and consent of the Legislative Council of the same, to be appointed in manner hereinafter mentioned.

And in matters of controversy resort to be had to the laws of Canada for the decision.

Not to extend to lands granted by his Majesty in common socage.

9. Provided always, that nothing in this Act contained shall extend, or be construed to extend, to any lands that have been granted by his Majesty, or shall hereafter be granted by his Majesty, his heirs and successors, to be holden in free and common socage.

Owners of lands, goods, etc. may alienate the same by will, etc.

10. Provided also, that it shall and may be lawful to and for every person that is owner of any lands, goods, or credits, in the said Province, and that has a right to alienate the said lands, goods, or credits, in his or her lifetime, by deed or sale, gift or otherwise, to devise or bequeath the same at his or her death by his or her last will and testament, any law, usage, or custom, heretofore, or now prevailing in the Province to the contrary hereof in anywise notwithstanding, such will being executed either according to the laws of Canada, or according to the forms prescribed by the laws of England.



11. And whereas the certainty and lenity of the criminal law of England, and the benefits, and advantages, resulting from the use of it, have been sensibly felt by the inhabitants, from an experience of more than nine years, during which it has been uniformly administered: Be it therefore further enacted by the authority aforesaid, that the same shall continue to be administered, and shall be observed as law in the Province of Quebec, as well in the description and quality of the offence, as in the method of prosecution and trial, and the punishments and forfeitures thereby inflicted, to the exclusion of every other rule of criminal law, or mode of proceeding thereon, which did, or might prevail in the said Province before the year of our Lord one thousand seven hundred and sixty-four, anything in this Act to the contrary thereof in any respect notwithstanding: \* \* \* (*The rest of the section repealed by Imperial Act, 35-36 Vict. c. 63; S. L. R. Act No. 1, 1872.*)

Criminal law of England to be continued in the Province.

12-17. (*Repealed by Imperial Act, 35 36 Vict. c. 63; S. L. R. Act No. 1. 1872.*)

18. Provided always, and it is hereby enacted, that nothing in this Act contained, shall extend or be construed to extend to repeal or make void, within the said Province of Quebec, any Act or Acts of the Parliament of Great Britain heretofore made for prohibiting, restraining or regulating the trade or commerce of his Majesty's colonies and plantations in America; but that all and every the said Acts, and also all Acts of Parliament heretofore made concerning or respecting the said colonies and plantations, shall be and are hereby declared to be in force within the said Province of Quebec and every part thereof.

All Acts formerly made to be in force within the Province.

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### 31 GEORGE, 3, Chapter 31.

An Act to repeal certain parts of an Act passed in the Fourteenth Year of His Majesty's Reign, intituled "An Act for making more effectual Provision for the Government of the Province of Quebec in North America" and to make further Provision for the Government of the said Province.

(10th June, A.D. 1791.)

[*Whole Act, except part now printed, repealed by Imp. Act 35-36 Vict. c. 63; S. L. R. Act No. 1, 1872.*]

His Majesty may authorize the Governor, with the advice of the Executive Council, to erect parsonages, and endow them;

38. And be it further enacted by the authority aforesaid, that it shall and may be lawful for His Majesty, his heirs or successors, to authorize the Governor, or Lieutenant Governor, of each of the said Provinces respectively, or the person administering the Government therein, from time to time, with the advice of such Executive Council as shall have been appointed by His Majesty, his heirs or successors, within such Province for the affairs thereof, to constitute and erect, within every township or parish which now is or hereafter may be formed, constituted or erected within such Province, one or more parsonage or rectory, or parsonages or rectories, according to the establishment of the Church of England, and from time to time, by an instrument under the Great Seal of such Province, to endow every such parsonage or rectory with so much or such part of the lands so allotted and appropriated as aforesaid in respect of any lands within such township or parish which shall have been granted subsequent to the commencement of this Act, or of such lands as may have been allotted and appropriated for the same purpose by, or in virtue of, any instruction which may be given by His Majesty in respect of any lands granted by His Majesty before the commencement of this Act, as such Governor, Lieutenant Governor or person administering the Government shall, with the advice of the said Executive Council, judge to be expedient under the then existing circumstances of such township or parish.

and may authorize the Governor to present incumbents to them, who are to enjoy the same as incumbents in England.

39. And be it further enacted by the authority aforesaid, that it shall and may be lawful for His Majesty, his heirs or successors, to authorize the Governor, Lieutenant Governor or person administering the Government of each of the said Provinces respectively, to present to every such parsonage or rectory an incumbent or minister of the Church of England, who shall have been duly ordained according to the

rites of the said church, and to supply from time to time such vacancies as may happen therein; and that every person so presented to any such parsonage or rectory shall hold and enjoy the same, and all rights, profits and emoluments thereunto belonging or granted, as fully and amply and in the same manner and on the same terms and conditions, and liable to the performance of the same duties, as the incumbent of a parsonage or rectory in England.

40. Provided always, and be it further enacted by the authority aforesaid, that every such presentation of an incumbent or minister to any such parsonage or rectory, and also the enjoyment of any such parsonage or rectory, and of the rights, profits, and emoluments thereof by any such incumbent or minister, shall be subject and liable to all rights of institution and all other spiritual, and ecclesiastical, jurisdiction and authority, which have been lawfully granted by His Majesty's royal letters patent to the bishop of Nova Scotia, or which may hereafter by His Majesty's royal authority be lawfully granted or appointed to be administered and executed within the said Provinces or either of them respectively by the said bishop of Nova Scotia or by any other person or persons according to the laws and canons of the Church of England which are lawfully made and received in England.

Presentations to parsonages and the enjoyment of them to be subject to the jurisdiction granted to the Bishop of Nova Scotia, etc.

(See R. S. O. c. 306.)

43. And be it further enacted by the authority aforesaid, that all lands which shall be hereafter granted within the said Province of Upper Canada shall be granted in free and common soccage in like manner as lands are now holden in free and common soccage in that part of Great Britain called England; and that in every case where lands shall be hereafter granted within the said Province of Lower Canada, and where the grantee thereof shall desire the same to be granted in free and common soccage, the same shall be so granted; but subject nevertheless to such alterations with respect to the nature and consequences of such tenure of free and common soccage as may be established by any law or laws which may be made by His Majesty, his heirs or successors, by and with the advice and consent of the Legislative Council and Assembly of the Province.

Lands in Upper Canada to be granted in free and common soccage, and also in Lower Canada if desired.

44. And be it further enacted by the authority aforesaid, that if any person or persons holding any lands in the said Province of Upper Canada by virtue of any certificate of occupation derived under the authority of the Governor and Council of the Province of Quebec, and having power and authority to alienate the same, shall at any time from and after the commencement of this Act surrender the same into the hands of His Majesty, his heirs or successors, by petition to the Governor, or Lieutenant Governor, or person administering the

Persons holding lands in Upper Canada, and surrendering them, may have free grants thereof in free and common soccage.

Government of the said Province, setting forth that he, she or they is or are desirous of holding the same in free and common soccage, such Governor, or Lieutenant Governor, or person administering the Government, shall thereupon cause a fresh grant to be made to such person or persons of such lands, to be holden in free and common soccage.

Such fresh grants not to bar any right or title to the lands.

45. Provided nevertheless and be it further enacted by the authority aforesaid, that such surrender and grant shall not avoid or bar any right or title to any such lands so surrendered, or any interest in the same, to which any person or persons other than the person or persons surrendering the same shall have been entitled either in possession, remainder, or reversion, or otherwise, at the time of such surrender, but that every such surrender, and grant, shall be made subject to every such right, title, and interest, and that every such right, title, or interest, shall be as valid and effectual, as if such surrender and grant had never been made.

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## 28-29 VICTORIA, Chapter 63.

### An Act to remove Doubts as to the Validity of Colonial Laws.

(29th June, A.D 1865.)

**W**HEREAS doubts have been entertained respecting the validity of divers laws enacted or purporting to have been enacted by the Legislatures of certain of Her Majesty's colonies, and respecting the powers of such legislatures, and it is expedient that such doubts should be removed: Be it hereby enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The term "Colony" shall in this Act include all of Her Majesty's possessions abroad in which there shall exist a Legislature, as hereinafter defined, except the Channel Islands, the Isle of Man and such territories as may for the time being be vested in Her Majesty under or by virtue of any Act of Parliament for the Government of India:

The terms "Legislature" and "Colonial Legislature" shall severally signify the authority, other than the Imperial Parliament or Her Majesty in Council, competent to make laws for any colony:

The term "Representative Legislature" shall signify any colonial Legislature which shall comprise a legislative body of which one half are elected by inhabitants of the colony:

The term "Colonial Law" shall include laws made for any colony either by such Legislature as aforesaid or by Her Majesty in Council:

An Act of Parliament, or any provision thereof, shall, in construing this Act, be said to extend to any colony when it is made applicable to such colony by the express words or necessary intendment of any Act of Parliament:

The term "Governor" shall mean the officer lawfully administering the Government of any colony:

The term "Letters Patent" shall mean Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland.

2. Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of Parliament, or having in the colony the force and effect of

such Act, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

Colonial law when not void for repugnancy.

3. No colonial law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid.

Colonial law not void for inconsistency with instructions.

4. No colonial law, passed with the concurrence of or assented to by the Governor of any colony, or to be hereafter so passed, or assented to, shall be, or be deemed to have been, void or inoperative by reason only of any instructions with reference to such law or the subject thereof which may have been given to such Governor by or on behalf of Her Majesty, by any instrument other than the letters patent or instrument authorizing such Governor to concur in passing, or to assent to, laws for the peace, order, and good government of such colony, even though such instructions may be referred to in such letters patent, or last mentioned instrument.

Colonial Legislature may establish, etc. courts of law.

5. Every colonial Legislature shall have, and be deemed at all times to have had, full power within its jurisdiction to establish Courts of Judicature, and to abolish and reconstitute the same, and to alter the constitution thereof, and to make provision for the administration of justice therein; and every representative Legislature shall, in respect to the colony under its jurisdiction, have, and be deemed at all times to have had, full power to make laws respecting the constitution, powers, and procedure of such Legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament, Letters Patent, Order in Council, or Colonial Law for the time being in force in the said colony.

Representative Legislature may alter constitution.

Certified copies of laws to be evidence that they are properly passed.

6. The certificate of the clerk or other proper officer of a Legislative Body in any colony to the effect that the document to which it is attached is a true copy of any colonial law assented to by the Governor of such colony, or of any bill reserved for the signification of Her Majesty's pleasure by the said Governor, shall be *prima facie* evidence that the document so certified is a true copy of such law or bill, and, as the case may be, that such law has been duly and properly passed and assented to, or that such bill has been duly and properly passed and presented to the Governor; and any proclamation purporting to be published by authority of the Governor in any newspaper in the colony to which such law or bill shall relate, and signifying Her Majesty's disallowance of any such colonial law, or Her Majesty's assent to any such reserved bill as aforesaid, shall be *prima facie* evidence of such disallowance, or assent.

Proclamation of assent and disallowance.

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## 34-35 VICTORIA, Chapter, 28.

### An Act respecting the Establishment of Provinces in the Dominion of Canada.

(29th June, A.D. 1871.)

**W**HEREAS doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in territories admitted, or which may hereafter be admitted, into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "*The British North America Act, 1871.*" Short title.

2. The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of laws for the peace, order, and good government of such Province, and for its representation in the said Parliament. Parliament of Canada may establish new Provinces, and provide for the constitution, etc. thereof.

3. The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish, or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby. Alteration of limits of Provinces.

4. The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any Province. Parliament of Canada may legislate for any territory not included in a Province.

5. The following Acts passed by the said Parliament of Canada, and intituled respectively, "An Act for the temporary government of Rupert's Land and the North-Western Territory" Confirmation of Acts of Parliament of Canada, 32-

38 Vict.  
(Canadian)  
cap. 3 ; 38  
Vict (Cana-  
dian) cap. 3.

when united with Canada” and “An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of the Province of Manitoba,” shall be, and be deemed to have been, valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen’s name, of the Governor General of the said Dominion of Canada.

Limitation of  
powers of  
Parliament  
of Canada to  
legislate for an  
established  
Province.

6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly and to make laws respecting elections in the said Province.



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## PART II.

### IMPERIAL STATUTES OF GENERAL PRACTICAL UTILITY, (PASSED SUBSEQUENTLY TO 15TH OCTOBER, 1792), IN FORCE IN ONTARIO *EX PROPRIO VIGORE*.

*Note.*—The Statutes included in this Part are some of those mentioned in Part IV. post, p. xliii., which it is deemed expedient to print in full.

1. 6-7 Victoria, c. 22, s. 1 . . . . . Evidence.
2. 14-15 Victoria, c. 99, s. 11 . . . Evidence.
3. 19-20 Victoria, c. 113 . . . . . Evidence.
4. 22 Victoria, c. 20 . . . . . Evidence.
5. 22-23 Victoria, c. 63 . . . . . Evidence of foreign law.
6. 24 Victoria, c. 11 . . . . . Evidence of foreign law.
7. 31-32 Victoria, c. 37 . . . . . Evidence.

#### 6-7 VICTORIA, Chapter 22.

An Act to authorize the Legislatures of certain of Her Majesty's Colonies to pass laws for the admission, in certain cases, of unsworn Testimony in Civil and Criminal Proceedings.

(31st May, 1843.)

**W**HEREAS there are resident within the limits of, or in countries adjacent to, divers of the British Colonies and plantations abroad, various tribes of barbarous and uncivilized people, who, being destitute of the knowledge of God and of any religious belief, are incapable of giving evidence on oath in any court of justice within such colonies or plantations: and whereas doubts have arisen whether any laws which have been, or which might be made by the Legislatures of such colonies respectively to provide for the admissibility in such courts of the evidence of such persons, are not, or would not be, repugnant to the law of England, and therefore null and void; and it is expedient that such doubts should be removed: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present Parliament assembled,

Laws or ordinances made by the Legislatures of British colonies for admission of the evidence of certain persons residing therein shall have the same effect as any other laws or ordinances of any such Legislature.

and by the authority of the same, that no law or ordinance made or to be made by the Legislature of any British Colony for the admission of the evidence of any such persons as aforesaid in any court, or before any magistrate, within any such colony, shall be, or be deemed to have been, null and void, or invalid, by reason of any repugnancy, or supposed repugnancy of any such enactment to the law of England, but that every law or ordinance made, or to be made, by any such Legislature as aforesaid, for the admission before any such court, or magistrate, of the evidence of any such persons as aforesaid, on any conditions thereby imposed, shall have such and the same effect, and shall be subject to the confirmation or disallowance of Her Majesty, in such and the same manner, as any other law or ordinance enacted for any other purpose by any such Colonial Legislature.

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14-15 VICTORIA, Chapter 99.

An Act to amend the Law of Evidence.

(7th August, 1851.)

**W**HEREAS it is expedient to amend the law of evidence in divers particulars: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

11. Every document which, by any law now in force or hereafter to be in force, is or shall be admissible in evidence of any particular in any court of justice in England, or Wales, or Ireland, without proof of the seal, or stamp, or signature, authenticating the same, or of the judicial, or official, character of the person appearing to have signed the same, shall be admitted in evidence to the same extent and for the same purposes in any court of justice of any of the British colonies, or before any person having in any of such colonies by law, or by consent of parties, authority to hear, receive, and examine evidence, without proof of the seal, or stamp, or signature, authenticating the same, or of the judicial, or official, character of the person appearing to have signed the same.

Documents admissible without proof of seal, etc., in England, Wales, or Ireland, to be equally admissible in the colonies.

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## 19-20 VICTORIA, Chapter 113.

An Act to provide for taking Evidence in Her Majesty's Dominions in relation to Civil and Commercial Matters pending before Foreign Tribunals.

(29th July, 1856.)

**W**HEREAS it is expedient that facilities be afforded for taking evidence in Her Majesty's Dominions in relation to civil and commercial matters pending before foreign tribunals: Be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Any Court or Judge having authority under this Act may make an order for the examination of witnesses in relation to any civil or commercial matter pending before a foreign tribunal.

1. Where, upon an application for this purpose, it is made to appear to any Court or Judge having authority under this Act, that any court or tribunal of competent jurisdiction in a foreign country, before which any civil or commercial matter is pending, is desirous of obtaining the testimony, in relation to such matter, of any witness or witnesses within the jurisdiction of such first-mentioned Court, or of the Court to which such Judge belongs, or of such Judge, it shall be lawful for such Court, or Judge, to order the examination upon oath, upon interrogatories or otherwise, before any person or persons named in such order, of such witness or witnesses accordingly; and it shall be lawful for the said Court, or Judge, by the same order, or for such Court, or Judge, or any other Judge having authority under this Act, by any subsequent order, to command the attendance of any person to be named in such order, for the purpose of being examined, or the production of any writings or other documents to be mentioned in such order, and to give all such directions as to the time, place, and manner of such examination, and all other matters connected therewith, as may appear reasonable and just; and any such order may be enforced in like manner as an order made by such Court, or Judge, in a cause depending in such Court, or before such Judge.

Certificate of ambassador, etc. sufficient evidence in support of application.

2. A certificate under the hand of the ambassador, minister, or other diplomatic agent of any foreign power, received as such by Her Majesty, or in case there be no such diplomatic agent, then of the consul-general or consul of any such foreign power at London, received and admitted as such by Her Majesty, that any matter in relation to which an application is made under this Act is a civil or commercial matter pending before a court or tribunal in the country of which he is the diplomatic agent or consul having jurisdiction in the matter so

pending, and that such court or tribunal is desirous of obtaining the testimony of the witness or witnesses to whom the application relates, shall be evidence of the matters so certified; but, where no such certificate is produced, other evidence to that effect shall be admissible.

Other evidence admissible.

3. It shall be lawful for every person authorized to take the examination of witnesses by any order made in pursuance of this Act to take all such examinations upon the oath of the witnesses, or affirmation in cases where affirmation is allowed by law instead of oath, to be administered by the person so authorized; and if upon such oath or affirmation any person making the same wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury.

Examination of witnesses to be taken upon oath.

Persons giving false evidence to be guilty of perjury.

4. Provided always, that every person whose attendance shall be so required shall be entitled to the like conduct money, and payment for expenses and loss of time, as upon attendance at a trial.

Payment of expenses of witnesses.

5. Provided also, that every person examined under any order made under this Act shall have the like right to refuse to answer questions tending to criminate himself, and other questions which a witness in any cause pending in the Court by which, or by a Judge whereof, or before the Judge by whom, the order for examination was made would be entitled to; and that no person shall be compelled to produce under any such order as aforesaid any writing or other document that he would not be compellable to produce at a trial of such a cause.

Persons to have right of refusal to answer questions and to produce documents, as in cases pending before the Court, etc., ordering the examination.

6. Her Majesty's Superior Courts of Common Law at Westminster and in Dublin respectively, the Court of Session in Scotland, and every Supreme Court in any of Her Majesty's colonies or possessions abroad, and any Judge of any such Court, and every Judge in any such colony or possession who by any Order of Her Majesty in Council may be appointed for this purpose, shall respectively be courts and judges having authority under this Act: Provided, that the Lord Chancellor, with the assistance of two of the judges of the Courts of Common Law at Westminster, shall frame such rules and orders as shall be necessary or proper for giving effect to the provisions of this Act, and regulating the procedure under the same.

Certain courts and judges in the United Kingdom and the colonies shall have authority under this Act.

Lord Chancellor, etc., to frame rules etc.

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## 22 VICTORIA, Chapter 20.

An Act to provide for taking Evidence in Suits and Proceedings pending before Tribunals in Her Majesty's Dominions in Places out of the Jurisdiction of such Tribunals.

(19th April, 1859.)

**W**HEREAS it is expedient that facilities be afforded for taking evidence in or in relation to actions, suits, and proceedings pending before tribunals in Her Majesty's dominions in places in such dominions out of the jurisdiction of such tribunals: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Examination of witnesses out of the jurisdiction of any tribunal in Her Majesty's possessions in relation to any suit pending before such tribunal.

1. Where upon an application for this purpose it is made to appear to any Court or Judge having authority under this Act that any court or tribunal of competent jurisdiction in Her Majesty's dominions has duly authorized, by commission, order, or other process, the obtaining the testimony in or in relation to any action, suit, or proceeding, pending in or before such court or tribunal, of any witness or witnesses out of the jurisdiction of such court or tribunal, and within the jurisdiction of such first-mentioned Court, or of the Court to which such Judge belongs, or of such Judge, it shall be lawful for such Court, or Judge, to order the examination before the person or persons appointed, and in manner and form directed by such commission, order, or other process as aforesaid, of such witness or witnesses accordingly; and it shall be lawful for the said Court, or Judge, by the same order, or for such Court, or Judge, or any other Judge having authority under this Act, by any subsequent order, to command the attendance of any person to be named in such order for the purpose of being examined, or the production of any writings or other documents to be mentioned in such order, and to give all such directions as to time, place, and manner of such examination, and all other matters connected therewith, as may appear reasonable and just; and any such order may be enforced, and any disobedience thereof punished, in like manner as in case of an order made by such Court, or Judge, in a cause depending in such court or before such Judge.

Persons giving false evidence, guilty of perjury.

2. Every person examined as a witness under any such commission, order, or other process as aforesaid, who shall upon such examination wilfully and corruptly give any false evidence, shall be deemed and taken to be guilty of perjury.

3. Provided always, that every person whose attendance shall be so ordered shall be entitled to the like conduct money, and payment for expenses and loss of time, as upon attendance at a trial. Payment of expenses.

4. Provided also, that every person examined under any such commission, order, or other process as aforesaid, shall have the like right to refuse to answer questions tending to criminate himself, and other questions which a witness in any cause pending in the Court by which, or by a Judge whereof, or before the Judge by whom, the order for examination was made, would be entitled to ; and that no person shall be compelled to produce under any such order as aforesaid any writing or other document that he would not be compellable to produce at a trial of such a cause. Power to persons to refuse to answer questions or to produce documents.

5. Her Majesty's Superior Courts of Common Law at Westminster, and in Dublin, respectively, the Court of Session in Scotland, and any Supreme Court in any of Her Majesty's colonies or possessions abroad, and any judge of any such court, and every judge in any such colony or possession who, by any order of Her Majesty in Council, may be appointed for this purpose, shall respectively be courts and judges having authority under this Act. What courts and judges to have authority under this Act.

6. It shall be lawful for the Lord Chancellor of Great Britain, with the assistance of two of the judges of the Courts of Common Law at Westminster, so far as relates to England, and for the Lord Chancellor of Ireland, with the assistance of two of the judges of the Courts of Common Law at Dublin, so far as relates to Ireland, and for two of the judges of the Court of Session, so far as relates to Scotland, and for the chief or only judge of the Supreme Court in any of Her Majesty's colonies or possessions abroad, so far as relates to such colony or possession, to frame such rules and orders as shall be necessary or proper for giving effect to the provisions of this Act, and regulating the procedure under the same. Power to frame rules, etc. for giving effect to provisions of this Act.

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## 22-23 VICTORIA, Chapter 63.

An Act to afford Facilities for the more certain Ascertainment of the Law administered in one Part of Her Majesty's Dominions when pleaded in the Courts of another Part thereof.

(13th August, 1859.)

**W**HEREAS great improvement in the administration of the law would ensue if facilities were afforded for more certainly ascertaining the law administered in one part of Her Majesty's dominions when pleaded in the courts of another part thereof: Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Courts in one part of Her Majesty's dominions may remit a case for the opinion in law of a court in any other part thereof.

1. If in any action depending in any Court within Her Majesty's dominions, it shall be the opinion of such Court, that it is necessary or expedient for the proper disposal of such action to ascertain the law applicable to the facts of the case as administered in any other part of Her Majesty's dominions on any point on which the law of such other part of Her Majesty's dominions is different from that in which the Court is situate, it shall be competent to the Court in which such action may depend to direct a case to be prepared setting forth the facts, as these may be ascertained by verdict of a jury or other mode competent, or may be agreed upon by the parties, or settled by such person or persons as may have been appointed by the Court for that purpose in the event of the parties not agreeing; and upon such case being approved of by such Court, or a Judge thereof, they shall settle the questions of law arising out of the same on which they desire to have the opinion of another court, and shall pronounce an order remitting the same, together with the case, to the court in such other part of Her Majesty's dominions, being one of the Superior Courts thereof, whose opinion is desired upon the law administered by them as applicable to the facts set forth in such case, and desiring them to pronounce their opinion on the questions submitted to them in the terms of the Act; and it shall be competent to any of the parties to the action to present a petition to the court whose opinion is to be obtained, praying such last-mentioned court to hear parties or their counsel, and to pronounce their opinion thereon in terms of this Act, or to pronounce their opinion without hearing parties or counsel; and the court to which such petition shall be presented shall, if they think fit, appoint an early day for hearing parties or their counsel on such case, and shall thereafter pronounce their



opinion upon the questions of law as administered by them which are submitted to them by the Court; and in order to their pronouncing such opinion they shall be entitled to take such further procedure thereupon as to them shall seem proper.

2. Upon such opinion being pronounced, a copy thereof, certified by an officer of such court, shall be given to each of the parties to the action by whom the same shall be required, and shall be deemed and held to contain a correct record of such opinion.

Certified copies of opinion to be given.

3. It shall be competent to any of the parties to the action, after having obtained such certified copy of such opinion, to lodge the same with an officer of the Court in which the action may be depending, who may have the official charge thereof, together with a notice of motion setting forth that the party will, on a certain day named in such notice, move the Court to apply the opinion contained in such certified copy thereof to the facts set forth in the case hereinbefore specified; and the said Court shall thereupon apply such opinion to such facts, in the same manner as if the same had been pronounced by such Court itself upon a case reserved for opinion of the Court, or upon special verdict of a jury; or the said last-mentioned Court shall, if it think fit, when the said opinion has been obtained before trial, order such opinion to be submitted to the jury with the other facts of the case as evidence, or conclusive evidence, as the Court may think fit, of the foreign law therein stated; and the said opinion shall be so submitted to the jury.

Opinion to be applied by the Court making the remit, etc.

4. In the event of an appeal to Her Majesty in Council or to the House of Lords in any such action it shall be competent to bring under the review of Her Majesty in Council, or of the House of Lords, the opinion pronounced as aforesaid by any Court whose judgments are reviewable by Her Majesty in Council, or by the House of Lords; and Her Majesty in Council, or that House, may respectively adopt or reject such opinion of any Court whose judgments are respectively reviewable by them, as the same shall appear to them to be well founded, or not, in law.

Her Majesty in Council, or House of Lords, on appeal may, adopt or reject opinion.

5. In the construction of this Act, the word "action" shall include every judicial proceeding instituted in any court, civil, criminal, or ecclesiastical; and the words "Superior Courts" shall include, in England, the Superior Courts of Law at Westminster, the Lord Chancellor, the Lords Justices, the Master of the Rolls or any Vice-Chancellor, the Judge of the Court of Admiralty, the Judge Ordinary of the Court for Divorce and Matrimonial Causes, and the Judge of the Court of Probate; in Scotland, the High Court of Justiciary, and the Court of Session acting by either of its divisions; in Ireland, the Superior Courts of Law at Dublin, the Master of the Rolls, and the Judge of the Admiralty Court; and in any other part of Her Majesty's dominions, the Superior Courts of Law or Equity therein.

Interpretation of terms.

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## 24 VICTORIA, Chapter 11.

An Act to afford Facilities for the better Ascertainment of the Law of Foreign Countries when pleaded in Courts within Her Majesty's Dominions.

(17th May, 1861.)

22-23 Vict.  
c. 63.

**W**HEREAS an Act was passed in the twenty-second and twenty-third years of Her Majesty's reign, intituled "*An Act to afford Facilities for the more certain Ascertainment of the Law Administered in one part of Her Majesty's Dominions when Pleaded in the Courts of another part thereof*"; and whereas it is expedient to afford the like facilities for the better ascertainment, in similar circumstances, of the law of any foreign country or state with the Government of which Her Majesty may be pleased to enter into a convention for the purpose of mutually ascertaining the law of such foreign country or state when pleaded in actions depending in any courts within Her Majesty's Dominions and the law as administered in any part of Her Majesty's Dominions when pleaded in actions depending in the courts of such foreign country or state: Be it therefore enacted, by the Queen's Most Excellent Majesty; by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; viz.,

Superior courts within Her Majesty's dominions may remit a case, with queries, to a court of any foreign state with which Her Majesty may have a convention for that purpose, for ascertaining the law of such state as to the facts in question.

1. If, in any action depending in any of the Superior Courts within Her Majesty's Dominions, it shall be the opinion of such Court that it is necessary or expedient, for the disposal of such action, to ascertain the law applicable to the facts of the case as administered in any foreign state or country with the Government of which Her Majesty shall have entered into such convention as aforesaid, it shall be competent to the Court in which such action may depend to direct a case to be prepared setting forth the facts as these may be ascertained by verdict of jury or other mode competent, or as may be agreed upon by the parties, or settled by such person or persons as may have been appointed by the Court for that purpose, in the event of the parties not agreeing; and upon such case being approved of by such Court, or a Judge thereof, such Court, or Judge, shall settle the questions of law arising out of the same on which they desire to have the opinion of another court, and shall pronounce an order remitting the same, together with the case, to such superior court in such foreign state or country as shall be agreed upon in said convention, whose opinion is desired upon the law administered by such

foreign court as applicable to the facts set forth in such case and requesting them to pronounce their opinion on the questions submitted to them; and upon such opinion being pronounced, a copy thereof, certified by an officer of such court, shall be deemed and held to contain a correct record of such opinion.

2. It shall be competent to any of the parties to the action, after having obtained such certified copy of such opinion, to lodge the same with the officer of the Court within Her Majesty's Dominions in which the action may be depending who may have the official charge thereof, together with a notice of motion setting forth that the party will, on a certain day named in such notice, move the Court to apply the opinion contained in such certified copy thereof to the facts set forth in the case hereinbefore specified, and the said Court shall thereupon, if it shall see fit, apply such opinion to such facts, in the same manner as if the same had been pronounced by such Court itself upon a case reserved for opinion of the Court, or upon special verdict of a jury; or the said last-mentioned Court shall, if it think fit, when the said opinion has been obtained before trial, order such opinion to be submitted to the jury with the other facts of the case as conclusive evidence of the foreign law therein stated; and the said opinion shall be so submitted to the jury: Provided always, that if after having obtained such certified copy the Court shall not be satisfied that the facts had been properly understood by the foreign court to which the case was remitted, or shall on any ground whatsoever be doubtful whether the opinion so certified does correctly represent the foreign law as regards the facts to which it is to be applied, it shall be lawful for such Court to remit the said case, either with or without alterations or amendments, to the same or to any other such superior court in such foreign state as aforesaid, and so from time to time, as may be necessary or expedient.

Copy of opinion to be lodged in Court in which action depends.

Court to apply opinion to the facts set forth in the case, etc.

Remitter of case back to foreign court.

3. If in any action depending in any court of a foreign country or state with whose Government Her Majesty shall have entered into a convention as above set forth, such court shall deem it expedient to ascertain the law applicable to the facts of the case as administered in any part of Her Majesty's Dominions, and if the foreign court in which such action may depend shall remit to the Court in Her Majesty's Dominions whose opinion is desired a case setting forth the facts and the questions of law arising out of the same on which they desire to have the opinion of a Court within Her Majesty's Dominions, it shall be competent to any of the parties to the action to present a petition to such last-mentioned Court, whose opinion is to be obtained, praying such Court to hear parties or their counsel, and to pronounce their opinion thereon in terms of this Act, or to pronounce their opinion without hearing parties or counsel; and the Court to which such petition,

Courts in Her Majesty's Dominions shall pronounce opinion on case remitted by a foreign Court.

shall be presented shall consider the same, and, if they think fit, shall appoint an early day for hearing parties or their counsel on such case, and shall pronounce their opinion upon the questions of law as administered by them which are submitted to them by the foreign court; and in order to their pronouncing such opinion they shall be entitled to take such further procedure thereupon as to them shall seem proper; and upon such opinion being pronounced a copy thereof, certified by an officer of such Court, shall be given to each of the parties to the action by whom the same shall be required.

**Interpretation  
of terms.**

4. In the construction of this Act the word "action" shall include every judicial proceeding instituted in any court, civil, criminal, or ecclesiastical; and the words "Superior Courts" shall include, in England, the Superior Courts of Law at Westminster, the Lord Chancellor, the Lords Justices, the Master of the Rolls, or any Vice-Chancellor, the Judge of the Court of Admiralty, the Judge Ordinary of the Court for Divorce and Matrimonial Causes and the Judge of the Court of Probate; in Scotland, the High Court of Justiciary, and the Court of Session, acting by either of its divisions; in Ireland, the Superior Courts of Law at Dublin, the Master of the Rolls, and the Judge of the Admiralty Court; and in any other part of Her Majesty's Dominions, the Superior Courts of Law or Equity therein; and in a foreign country or state, any Superior Court or Courts which shall be set forth in any such convention between Her Majesty and the Government of such foreign country or state.

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## 31-32 VICTORIA, Chapter 37.

### An Act to amend the Law relating to Documentary Evidence in certain cases.

(25th June, 1868.)

**W**HEREAS it is expedient to amend the law relating to evidence: Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual, and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as "*The Documentary Evidence Act, 1868.*" Short title.

2. Prima facie evidence of any proclamation, order, or regulation issued before or after the passing of this Act by Her Majesty, or by the Privy Council, also of any proclamation, order, or regulation issued before or after the passing of this Act by or under the authority of any such department of the Government, or officer as is mentioned in the first column of the Schedule hereto, may be given in all courts of justice, and in all legal proceedings whatsoever, in all or any of the modes hereinafter mentioned; that is to say:

(1) By the production of a copy of the Gazette purporting to contain such proclamation, order, or regulation.

(2) By the production of a copy of such proclamation, order, or regulation, purporting to be printed by the Government printer, or, where the question arises in a court in any British colony or possession, of a copy purporting to be printed under the authority of the legislature of such British colony or possession.

(3) By the production, in the case of any proclamation, order, or regulation issued by Her Majesty, or by the Privy Council, of a copy or extract purporting to be certified to be true by the Clerk of the Privy Council, or by any one of the Lords or others of the Privy Council, and, in the case of any proclamation, order, or regulation issued by or under the authority of any of the said departments or officers, by the production of a copy or extract purporting to be certified to be true by the person or persons specified in the second column of the said Schedule in connection with such department or officer.

Any copy or extract made in pursuance of this Act may be in print or in writing, or partly in print and partly in writing.

No proof shall be required of the handwriting or official position of any person certifying, in pursuance of this Act, to

the truth of any copy of or extract from any proclamation, order, or regulation.

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Act to be in force in colonies.

3. Subject to any law that may be from time to time made by the Legislature of any British colony or possession, this Act shall be in force in every such colony and possession.

Punishment for forgery, or knowingly tendering forged documents in evidence.

4. If any person commits any of the offences following; that is to say,—

(1) Prints any copy of any proclamation, order, or regulation, which falsely purports to have been printed by the Government printer, or to be printed under the authority of the Legislature of any British colony or possession, or tenders in evidence any copy of any proclamation, order, or regulation, which falsely purports to have been printed as aforesaid, knowing that the same was not so printed; or,

(2) Forges, or tenders in evidence, knowing the same to have been forged, any certificate by this Act authorized to be annexed to a copy of or extract from any proclamation, order, or regulation; he shall be guilty of felony, and shall on conviction be liable to be sentenced to penal servitude for such term as is prescribed by the Penal Servitude Act, 1864, as the least term to which an offender can be sentenced to penal servitude, or to be imprisoned for any term not exceeding two years, with or without hard labour.

Definition of terms.

5. The following words shall in this Act have the meaning hereinafter assigned to them, unless there is something in the context repugnant to such construction; (that is to say.)

“British colony and possession.”

“British colony and possession” shall for the purposes of this Act include the Channel Islands, the Isle of Man, and such territories as may for the time being be vested in Her Majesty by virtue of any Act of Parliament for the government of India, and all other Her Majesty’s dominions.

“Legislature.”

“Legislature” shall signify any authority, other than the Imperial Parliament, or Her Majesty in Council, competent to make laws for any colony or possession.

“Privy Council.”

“Privy Council” shall include Her Majesty in Council, and the Lords and others of Her Majesty’s Privy Council, or any of them, and any committee of the Privy Council that is not specially named in the Schedule hereto.

“Government printer.”

“Government printer” shall mean and include the printer to Her Majesty, and any printer purporting to be the printer authorized to print the statutes, ordinances, Acts of State, or other public Acts of the Legislature of any British colony or possession, or otherwise to be the Government printer of such colony or possession.

“Gazette.”

“Gazette” shall include the London Gazette, the Edinburgh Gazette, and the Dublin Gazette, or any of such Gazettes.

6. The provisions of this Act shall be deemed to be in addition to, and not in derogation of, any powers of proving documents given by any existing statute, or existing at common law. Provisions of Act to be cumulative.

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SCHEDULE.

<i>Column 1.</i>	<i>Column 2.</i>
<b>NAME OF DEPARTMENT OR OFFICER.</b>	<b>NAMES OF CERTIFYING OFFICERS.</b>
The Commissioners of the Treasury.	Any Commissioner, Secretary, or Assistant Secretary, of the Treasury.
The Commissioners for executing the office of Lord High Admiral.	Any of the Commissioners for executing the office of Lord High Admiral, or either of the Secretaries to the said Commissioners.
Secretaries of State.	Any Secretary, or under Secretary, of State.
Committee of Privy Council for Trade.	Any member of the Committee of Privy Council for Trade, or any Secretary, or Assistant Secretary, of the said Committee.
The Poor Law Board.	Any Commissioner of the Poor Law Board, or any Secretary, or Assistant Secretary, of the said Board.

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## PART III.

### 31 CHARLES 2, Chapter 2.

(Commonly called "THE HABEAS CORPUS ACT.")

Rot. Parl.  
31 C. 2.  
nu. 2.

An Act for the better securing the Liberty of the Subject and for Prevention of Imprisonments beyond the Seas (a).

(A.D. 1679.)

Recital that delays had been used by sheriffs in making returns of writs of habeas corpus, &c.

Sheriff, &c. within three days after service of habeas corpus, with the exception of treason and felony, as and under the regulations herein mentioned, to bring up the body before the court to which the writ is returnable;

WHEREAS great delays have been used by sheriffs gaolers and other officers to whose custody any of the Kings subjects have been committed for criminal or supposed criminal matters in making returns of writs of habeas corpus to them directed by standing out an alias and pluries habeas corpus and sometimes more and by other shifts to avoid their yielding obedience to such writs contrary to their duty and the known laws of the land whereby many of the Kings subjects have been and hereafter may be long detained in prison in such cases where by law they are baylable to their great charge and vexation. For the prevention whereof and the more speedy releife of all persons imprisoned for any such criminal or supposed criminal matters bee it enacted by the Kings most excellent Majestie by and with the advice and consent of the lords spirituall and temporall and commons in this present Parlyament assembled and by the authoritie thereof that whensoever any person or persons shall bring any habeas corpus directed unto any sheriffe or sheriffes goaler minister or other person whatsoever for any person in his or their custody and the said writt shall be served upon the said officer or left at the goale or prison with any of the under officers under-keepers or deputy of the said officers or keepers that the said officer or officers his or their under officers under-keepers or deputies shall within three dayes after the service thereof as aforesaid (unlesse the committment aforesaid were for treason or fellony plainly and specially expressed in the warrant of committment) upon payment or tender of the charges of bringing the said prissoner to be ascertained by the judge or court

(a) This Act was introduced into Upper Canada, and is still in force, but has not been revised, because it deals only with cases of commitment or detainer for criminal or supposed criminal matter, (see preamble of R. S. O. c. 83). It is therefore printed as the Act now appears in the Imperial Revised Statutes, omitting only sections 10-14, which are inapplicable.



that awarded the same and endorsed upon the said writt not exceeding twelve pence per mile and upon security given by his owne bond to pay the charges of carrying backe the prisoner if he shall bee remanded by the court or judge to which he shall be brought according to the true intent of this present Act and that he will not make any escape by the way make returne of such writt or bring or cause to be brought the body of the partie soe committed or restrained unto or before the lord chauncelior or lord keeper of the great seale of England for the time being or the judges or barons of the said court from whence the said writt shall issue or unto and before such other person and persons before whome the said writt is made returnable according to the command thereof, and shall likewise then certifie the true causes of his detainer or imprisonment unlesse the committment of the said partie be in any place beyond the distance of twenty milés from the place or places where such court or person is or shall be resideing and if beyond the distance of twenty miles and not above one hundred miles then within the space of ten dayes and if beyond the distance of one hundred miles then within the space of twenty dayes after such delivery aforesaid and not longer.

and certifie the true causes of imprisonment.

Exception in respect of distance.

2. AND to the intent that noe sheriffe goaler or other officer may pretend ignorance of the import of any such writt bee it enacted by the authoritie aforesaid that all such writts shall be marked in this manner *Per statutum tricesimo primo Caroli Secundi Regis* and shall be signed by the person that awards the same AND if any person or persons shall be or stand committed or detained as aforesaid for any crime unlesse for treason or felony plainly expressed in the warrant of committment in the vacation time and out of terme it shall and may be lawfull to and for the person or persons soe committed or detained (other then persons convict or in execution) by legall processe or any one in his or their behalfe to appeale or complaine to the lord chauncellour or lord keeper or any one of his Majestyes justices either of the one bench or of the other or the barons of the Exchequer of the degree of the coife and the said lord chauncellor lord keeper justices or barons or any of them upon view of the copy or copies of the warrant or warrants of committment and detainer or otherwise upon oath made that such copy or copyes were denyed to be given by such person or persons in whose custody the prisoner or prisoners is or are detained and hereby authorized and required upon request made in writeing by such person or persons or any on his her or their behalfe attested and subscribed by two witnesses that were present at the delivery of the same to award and grant an habeas corpus under the seale of such court whereof he shall then be one of the judges to be directed to the officer or officers in whose custodie the party soe committed or detained shall be returnable immediate before the said lord chauncellor or lord keeper or such justice baron or any other justice or baron of the degree of the coife of any of the said

How writs to be marked.

Persons committed, except for treason and felony, &c. may appeal to the lord chancellor, &c.

Proceedings thereon.

Habeas corpus may be awarded

and upon service thereof the officer to bring up the prisoners as before mentioned ;

and there-upon within two days lord chancellor, &c. may discharge upon recognizance ;

and certify the writ with the return and recognizance. Proviso for process not bailable.

courts and upon service thereof as aforesaid the officer or officers his or their under-officer or under officers under keeper or under keepers or their deputy in whose custodie the partie is soe committed or detained shall within the times respectively before limited bring such prisoner or prisoners before the sd lord chauncellor or lord keeper or such justices barons or one of them before whome the said writt is made returnable and in case of his absence before any of them with the returne of such writt and the true causes of the committment and detainer and there-upon within two dayes after the partie shall be brought before them the said lord chauncellor or lord keeper or such justice or baron before whome the prisoner shall be brought as aforesaid shall discharge the said prisoner from his imprisonment takeing his or their recognizance with one or more suretie or sureties in any summe according to their discretions haveing regard to the quality of the prisoner and nature of the offence for his or their appearance in the Court of Kings Bench the terme following or at the next assizes sessions or generall goale-delivery of and for such county city or place where the committment was or where the offence was committed or in such other court where the said offence is properly cognizable as the case shall require and then shall certifie the said writt with the returne thereof and the said recognizance or recognizances into the said court where such appearance is to be made unlesse it shall appeare unto the said lord chauncellor or lord keeper or justice or justices or baron or barons that the party soe committed is detained upon a legall processe order or warrant out of some court that hath jurisdiction of criminall matters or by some warrant signed and sealed with the hand and seale of any of the said justices or barons or some justice or justices of the peace for such matters or offences for the which by the law the prisoner is not baileable.

Habeas corpus not granted in vacation to prisoners who have neglected to pray the same.

3. PROVIDED alwayes and bee it enacted that if any person shall have wilfully neglected by the space of two whole termes after his imprisonment to pray a habeas corpus for his enlargement such person soe wilfully neglecting shall not have any habeas corpus to be granted in vacation time in pursuance of this Act.

Officer neglecting, &c. to make the said returns, &c.

4. AND . . . if any officer or officers his or their under-officer or under-officers under-keeper or under-keepers or deputy shall neglect or refuse to make the returnes aforesaid or to bring the body or bodies of the prisoner or prisoners according to the command of the said writt within the respective times aforesaid or upon demand made by the prisoner or person in his behalfe shall refuse to deliver or within the space of six houres after demand shall not deliver to the person soe demanding a true copy of the warrant or warrants of committment and detayner of such prisoner, which he and they are hereby required to deliver accordingly all and every the head goalers and keepers of such prisons and such other person in whose custodie the prisoner shall be detained shall for the first

or upon demand to deliver a copy of warrant of commitment ;

offence forfeite to the prisoner or partie grieved the summe of one hundred pounds and for the second offence the summe of two hundred pounds and shall and is hereby made incapable to hold or execute his said office, the said penalties to be recovered by the prisoner or partie grieved his executors or administrators against such offender his executors or administrators by any action of debt suite bill plaint or information in any of the Kings courts at Westminster wherein noe essoigne protection priviledge injunction wager of law or stay of prosecution by non vult ulterius prosequi or otherwise shall bee admitted or allowed or any more then one imparlance, and any recovery or judgement at the suite of any partie grieved shall be a sufficient conviction for the first offence and any after recovery or judgement at the suite of a partie grieved for any offence after the first judgement shall bee a sufficient conviction to bring the officers or person within the said penaltie for the second offence.

first offence,  
penalty £100.

second offence  
£200 and  
incapacity.

Judgment at  
suit of party  
sufficient  
conviction.

5. AND for the prevention of unjust vexation by reiterated committments for the same offence bee it enacted by the authoritie aforesaid that noe person or persons which shall be delivered or sett at large upon any habeas corpus shall at any time hereafter bee againe imprisoned or committed for the same offence by any person or persons whatsoever other then by the legall order and processe of such court wherein he or they shall be bound by recognizance to appeare or other court haveing jurisdiction of the cause and if any other person or persons shall knowingly contrary to this Act recommitt or imprison or knowingly procure or cause to be recommitted or imprisoned for the same offence or pretended offence any person or persons delivered or sett at large as aforesaid or be knowingly aiding or assisting therein then he or they shall forfeite to the prisoner or party grieved the summe of five hundred pounds any colourable pretence or variation in the warrant or warrants of committment notwithstanding to be recovered as aforesaid.

Proviso as to  
imprisonment  
of party after  
having been  
set at large  
upon habeas  
corpus.

Unduly re-  
committing  
such dis-  
charged per-  
sons or  
assisting  
therein ;  
penalty to the  
party £500.

6. PROVIDED alwayes . . . that if any person or persons shall be committed for high treason or felony plainly and specially expressed in the warrant of committment upon his prayer or petition in open court the first weeke of the terme or first day of the sessions of oyer and terminer or generall goale delivery to be brought to his tryall shall not be indicted sometime in the next terme sessions of oyer and terminer or generall goale delivery after such committment it shall and may be lawfull to and for the judges of the Court of Kings Bench and justices of oyer and terminer or generall goale delivery and they are hereby required upon motion to them made in open court the last day of the terme sessions or goale-delivery either by the prisoner or any one in his behalfe to sett at liberty the prisoner upon baile unlesse it appeare to the judges and justices upon oath made that the witnesses for the King could not be produced the same terme sessions or generall goale-delivery. And if any person or persons committed as aforesaid upon his

If persons  
committed for  
high treason  
or felony  
plainly ex-  
pressed in  
warrant shall  
not on peti-  
tion be indic-  
ted as herein  
mentioned,  
judges, &c.  
may discharge  
upon bail ;

proviso ;

and if not indicted and tried as herein mentioned then to be discharged.

prayer or petition in open court the first weeke of the terme or first day of the sessions of oyer and terminer or generall goale delivery to be brought to his tryall shall not be indicted and tryed the second terme sessions of oyer and terminer or generall goale delivery after his committment or upon his tryall shall be acquitted he shall be discharged from his imprisonment.

Proviso respecting persons charged in debt, &c.

7. PROVIDED always that nothing in this Act shall extend to discharge out of prison any person charged in debt or other action or with processe in any civill cause but that after he shall be discharged of his imprisonment for such his criminall offence he shall be kept in custodie according to law for such other suite.

Persons committed for criminal matter not to be removed but by habeas corpus or other legal writ.

8. PROVIDED alwaies . . . that if any person or persons subject of this realme shall be committed to any prison or in custodie of any officer or officers whatsoever for any criminall or supposed criminall matter that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers unlesse it be by habeas corpus or some other legall writt or where the prisoner is delivered to the constable or other inferiour officer to carry such prisoner to some common goale or where any person is sent by order of any judge of assize or justice of the peace to any common worke-house or house of correction or where the prisoner is removed from one prison or place to another within the same county in order to his or her tryall or discharge in due course of law or in case of suddaine fire or infection or other necessity and if any person or persons shall after such committment aforesaid make out and signe or countersigne any warrant or warrants for such removeall aforesaid contrary to this Act as well he that makes or signes or countersignes such warrant or warrants as the officer or officers that obey or execute the same shall suffer and incurr the paines and forfeitures in this Act before-mentioned both for the first and second offence respectively to be recovered in manner aforesaid by the partie grieved.

Unduly making out, &c. warrant for removal ;

penalty.

Proviso for application for and granting habeas corpus in vacation-time.

9. PROVIDED alsoe . . . that it shall and may be lawful to and for any prisoner and prisoners as aforesaid to move and obtaine his or their habeas corpus as well out of the High Court of Chauncery or Court of Exchequer as out of the courts of Kings Bench or Common Pleas or either of them and if the said lerd chauncellor or lord keeper or any judge or judges baron or barons for the time being of the degree of the coife of any of the courts aforesaid in the vacation time upon view of the copy or copies of the warrant or warrants of committment or detainer or upon oath made that such copy or copies were denied as aforesaid shall deny any writt of habeas corpus by this Act required to be granted being moved for as aforesaid they shall severally forfeite to the prisoner or partie grieved

Lord chancelor, &c. unduly denying writ ;

the summe of five hundred pounds to be recovered in manner aforesaid. penalty to party £500.

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10. (Or s. 11 in Ruffhead's Ed.)

*(Provides that habeas corpus may be directed into counties palatine, etc.)*

11. (Or s. 12 in Ruffhead's Ed.)

*(Provides that no subject to be sent prisoner into Scotland etc.,)*

12. (Or s. 13 in Ruffhead's Ed.)

*(Provides for contracts for transportation.)*

13. (Or. s. 14 in Ruffhead's Ed.)

*(Provides for transportation of persons convicted of felony and praying to be transported.)*

14. (Ors. 15 in Ruffhead's Ed.) *(Exception as to imprisonment before 1st June, 1679.)*

15. PROVIDED alsoe that if any person or persons at any time resiant in this realme shall have committed any capital offence in Scotland or Ireland or any of the islands or forreigne plantations of the King his heires or successors where he or she ought to be tryed for such offence such person or persons may be sent to such place there to receive such tryall in such manner as the same might have beene used before the making of this Act any thing herein contained to the contrary notwithstanding.

Proviso for sending persons to be tried in places where any capital offence committed.

16. PROVIDED alsoe . . . that noe person or persons shall be sued impleaded molested or troubled for any offence against this Act unlesse the partie offending be sued or impleaded for the same within two yeares at the most after such time wherein the offence shall be committed in case the partie grieved shall not be then in prison and if he shall be in prison then within the space of two yeares after the decease of the person imprisoned or his or her delivery out of prison which shall first happen.

Limitation of prosecution for offences against this Act.

17. AND to the intent noe person may avoid his tryall at the assizes or generall goale-delivery by procureing his removeall before the assizes at such time as he cannot be brought backe to receive his tryall there bee it enacted that after the assizes proclaimed for that county where the prisoner is detained noe person shall be removed from the common goale upon any habeas corpus granted in pursuance of this Act but upon any such habeas corpus shall be brought before the judge of assize in open court who is thereupon to doe what to justice shall appertaine.

After assizes proclaimed, no person to be removed from common gaol upon habeas corpus, but brought before judge of assize.

After assizes person detained may have habeas corpus.

18. PROVIDED nevertheless that after the assizes are ended any person or persons detained may have his or her habeas corpus according to the direction and intention of this Act.

In informations, &c. brought for offence against this law ;

general issue.

19. AND . . . if any information suite or action shall be brought or exhibited against any person or persons for any offence committed or to be committed against the forme of this law it shall be lawfull for such defendants to pleade the generall issue that they are not guilty or that they owe nothing and to give such speciall matter in evidence to the jury that shall try the same which matter being pleaded has beene good and sufficient matter in law to have discharged the said defendant or defendants against the said information suite or action and the said matter shall be then as availeable to him or them to all intents and purposes as if he or they had sufficiently pleaded sett forth or alledged the same matter in barr or discharge of such information suite or action.

Proviso as to removal or bail of persons charged as accessories before the fact to petty treason or felony.

20. AND because many times persons charged with petty treason or felony or as accessaries thereunto are committed upon suspicion onely whereupon they are baileable or not according as the circumstances makeing out that suspicion are more or lesse weighty which are best knowne to the justices of peace that committed the persons and have the examinations before them or to other justices of the peace in the county Bee it therefore enacted that where any person shall appeare to be committed by any judge or justice of the peace and charged as accessory before the fact to any petty treason or felony or upon suspicion thereof or with suspicion of petty treason or felony which petty treason or felony shall be plainely and specially expressed in the warrant of commitment that such person shall not be removed or bailed by vertue of this Act or in any other manner then they might have beene before the making of this Act.

## PART IV.

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### TABLE OF IMPERIAL STATUTES (OTHER THAN THOSE RELATING TO CRIMINAL LAW INTRODUCED BY "THE QUEBEC ACT," 1774,) APPEARING TO BE IN FORCE IN CANADA *EX PROPRIO VIGORE*, AT THE END OF 1901.

*NOTE.—This Table is not to be considered as exhaustive, or exclusive. It is intended for convenience of reference.*

Table of Statute.	Subject.	Remarks.
5-6 Ed. 6, c. 16 . . . . .	Buying & Selling Offices	See 49 Geo. 3, c. 126 s. 1, <i>infra.</i> ; see also R. S. O. vol. 3, c. 328.
3 Car. 1, c. 1 . . . . .	"The Petition of Right"	
1 W. & M., c. 2 . . . . .	"The Bill of Rights"	Printed, R. S. O., vol. 3, p. vii.
12-13, W. 3, c. 2 . . . . .	"The Act of Settlement"	
14 Geo. 3, c. 83 . . . . .	"The Quebec Act."	Printed, R. S. O., vol. 3, p. x.
31 Geo. 3, c. 31 . . . . .	Act making provision for government of B.N.A.	Printed, R. S. O., vol. 8, p. xiv.
49 Geo. 3, c. 126, s. 1 . . . . .	Buying & Selling Offices	See 5&6 Ed. 6, c. 16, <i>supra</i> , and R. S. O. vol. 3, c. 328
6 Geo. 4, c. 75 . . . . .	Canada Co. . . . .	
9 Geo. 4, c. 51 . . . . .	Canada Co. . . . .	
1 W. 4, c. 4, s. 2 . . . . .	Demise of Crown . . . . .	
3-4 W. 4, c. 41, part, and particularly preamble, and ss. 3, 4 . . . . .	Privy Council . . . . .	
1-2 Vict., c. 110. part. and see particularly ss. 35, 56, 37, 42, 46. . . . .	Insolvency . . . . .	
5-6 Vict., c. 45 . . . . .	Copyright . . . . .	
6-7 Vict., c. 22, s. 1 . . . . .	Evidence . . . . .	Printed, R. S. O., vol. 3, p. xxi.
7-8 Vict., c. 12, (except ss. 1, 14, 17, 18, 21, which have been repealed). . . . .	Copyright . . . . .	
7-8 Vict., c. 69 . . . . .	Privy Council . . . . .	
10-11 Vict., c. 95, ss. 1, 2 . . . . .	Copyright . . . . .	
12-13 Vict., c. 96 . . . . .	Homicide at Sea . . . . .	
14-15 Vict., c. 99, s. 11 . . . . .	Evidence . . . . .	Printed, R. S. O. vol. 3, p. xxiii.
15-16 Vict., c. 12, (except ss. 1-5, 8, 11-13, which have been repealed). . . . .	Copyright . . . . .	
19-20 Vict., c. 23 . . . . .	Canada Co. . . . .	
19-20 Vict., c. 79, ss. 81, 102 . . . . .	Bankruptcy in Scotland . . . . .	
19-20 Vict., c. 113 . . . . .	Evidence . . . . .	Printed, R. S. O. vol. 3, p. xxiv.
22 Vict., c. 20 . . . . .	Evidence . . . . .	Printed, R. S. O. vol. 3, p. xxvi.
22-23 Vict., c. 63 . . . . .	Evidence . . . . .	Printed, R. S. O. vol. 8, p. xxviii.

TABLE OF IMPERIAL STATUTES.—*Continued.*[www.libtool.com.cn](http://www.libtool.com.cn)

Table of Statutes.	Subject.	Remarks.
24 Vict., c. 11.....	Evidence .....	Printed, R. S. O. vol. 3, p. xxx.
25-26 Vict., c. 89, s. 55 ....	Companies Act .....	
27-28 Vict., c. 19 .....	Companies' Seals Act ..	
28-29 Vict., c. 63.....	Validity of Colonial Laws	Printed, R. S. O. vol. 3, p. xvii.
28-29 Vict., c. 64.....	Marriage.....	
30-31 Vict., c. 3, except parts repealed.....	B. N. A. Act.....	Printed, R. S. O. vol. 1, p. xxvii.
31-32 Vict., c. 37 .....	Evidence .....	Printed, R. S. O. vol. 3, p. xxxiii.
33-34 Vict., c. 14.....	Naturalization.....	
33-34 Vict., c. 90.....	Foreign Enlistment.....	
33-34 Vict., c. 102.....	Naturalization.....	
34-35 Vict., c. 28.....	Constitutional .....	Printed, R. S. O. vol. 3, p. xix.
35-36 Vict., c. 39.....	Naturalization.....	
37-38 Vict., c. 12 .....	Criminal Law .....	
38-39 Vict., c. 12.....	Copyright.....	
38-39 Vict., c. 38.....	Constitutional .....	See R. S. O. vol. 1 p. xxx.
38-39 Vict., c. 53 (except part repealed by S. L. R. Act, 1898)	Copyright.....	
39-40 Vict., c. 36, s. 152 ....	Copyright.....	
40-41 Vict., c. 59.....	Colonial Stock.....	See 63-4 Vict, c. 62, infra.
44-45 Vict., c. 69, (but see S. L. R. Act, 1898).....	Fugitive offenders.....	
44-45 Vict., c. 3.....	Privy Council.....	
49 Vict., c. 13 .....	Light House, Cape Race	Printed, Dom. Sts. 1887, p. iii.
49-50 Vict., c. 33, (except preamble, see S. L. R. Act, 1898).....	Copyright.....	
49-50 Vict., c. 35, (see S. L. R. Act, 1898).....	Parliamentary Represent- tation of Territories ..	
49-50 Vict., c. 48.....	Medical Practitioners ..	Printed, Dom. Sts. 1877, p. xiv.
50 Vict., c. 3.....	Submarine Telegraph ..	Printed, Dom. Sts. 1877, p. xxx.
50-51 Vict., c. 70.....	Privy Council.....	Printed, Dom. Sts. 1888, p. xii.
51 Vict., c. 67.....	Superannuation .....	Printed, Dom. Sts. 1888, p. iii.
52-53 Vict., c. 28.....	Boundaries of Ontario ..	Printed, R. S. O. vol. 1, p. lviii.
52-53 Vict., c. 42 .....	Customs .....	Printed, Dom. Sts. 1890, p. viii.
53-54 Vict., c. 27.....	Colonial Cts. of Admiralty	Printed, D. S. 1891 p. iii. See 54-55 Vict., c. 29. (D.)
53-54 Vict., c. 37 in part....	Foreign Jurisdiction ...	Printed, Dom. Sts. 1891, p. xiv.
53-54 Vict., c. 47 .....	Marriage.....	Printed, Dom. Sts. 1891, p. xxii.
54-55 Vict., c. 19 .....	Seal Fishery, Behring Sea.....	Printed, Dom. Sts. 1891, p. xxvi.



TABLE OF IMPERIAL STATUTES.—*Concluded.*

Table of Statutes.	Subject.	Remarks.
54-55 Vict., c. 31 .....	Mail Ships .....	Printed, Dom.Sts. 1891, p. xxxiv.
54-55 Vict., c. 74 .....	Foreign Marriages .....	Printed, Dom.Sts. 1891, p. xlii.
55 Vict., c. 60 (a).....	Colonial Probates.....	Printed, Dom.Sts. 1892, p. iii.
55-56 Vict., c. 35.....	Colonial Stock.....	See 63-64 V. c.62, infra, 40-41 V.c. .59, supra.
56-57 Vict., c. 23 .....	Behring Sea .....	Printed, Dom.Sts. 1894, p. iii.
57 Vict., c. 2.....	Behring Sea Award....	Printed, Dom.Sts. 1894, p. xv.
57-58 Vict., c. 39 .....	Prize Courts .....	Printed, Dom.Sts. 1895, p. 375.
57-58 Vict., c. 60.....	The Merchant Shipping Act 1894.....	Printed, Dom.Sts. 1895, p. 3.
58-59 Vict., c. 21 .....	Behring Sea .....	Printed, Dom.Sts. 1896, p. iii.
58-59 Vict., c. 34.....	Boundaries of Colonies.	
58-59 Vict., c. 43.....	Naturalization.....	
58-59 Vict., c. 44.....	Privy Council.....	
59 Vict., (2nd Sess.) c. 3....	Deputy Speaker, Senate	Printed, Dom.Sts. 1896, p. xi.
59-60 Vict., c. 12 ....	Floating Derelicts .....	Printed, Dom.Sts. 1896-7, p. i.
63-64 Vict., c. 14 (a).....	Colonial Solicitors' Act.	Printed, Dom.Sts. 1901, p. i.
63-64 Vict., c. 62.....	Colonial Stock.....	
1 Ed. 7, c. 5 .....	Demise of Crown .....	
1 Ed. 7, c. 15 .....	Royal Titles.....	
1 Ed. 7, c. 31 .....	Pacific Cable .....	

(a) These Acts, though not in force in Canada, are inserted because authorizing the re-sealing of Colonial letters probates in England, and the admission of Colonial Solicitors in England.

25-26 Vict., c. 68, relating to Copyright, was held not to be in force in Ontario: *Graves v. Gorrie*, 1 O.L.R. 309. This case was affirmed by the Court of Appeal April 12th, 1902.

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# REVISED STATUTES OF ONTARIO,

www.libtool.com.cn 1897

## VOLUME III.

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# PROCLAMATION

BRINGING THE

## THIRD VOLUME OF THE REVISED STATUTES OF 1897 INTO FORCE.



[L.S.] O. MOWAT.

CANADA.

PROVINCE OF ONTARIO.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India,

To all to whom these presents shall come—GREETING.

PROCLAMATION.

J. M. GIBSON, } **W**HEREAS in and by a certain Act of the  
*Attorney-General.* } Legislature of Our Province of Ontario  
passed in the Session thereof, held in the second year of Our Reign, and  
entitled "An Act respecting the Imperial Statutes relating to Property  
and Civil Rights incorporated into the Statute Law of Ontario," after  
reciting that the said Imperial Statutes had been revised, classified and  
consolidated, it was amongst other things in effect enacted that  
the printed Roll attested as that of the Statutes so revised and  
consolidated as aforesaid under the signature of Our Lieutenant-Governor  
and that of the Clerk of the Legislative Assembly and deposited in the  
Office of the Clerk of the Legislative Assembly should be held to be the  
original thereof and to embody the several Acts mentioned as to be  
repealed in the Schedule A thereto annexed, and that Our said

iv. .PROCLAMATION RESPECTING REVISED STATUTES, 1897.

Lieutenant-Governor might select such Acts and parts of Acts passed during the late Session of the Legislative Assembly as he might deem it advisable to incorporate with the said Statutes contained in the said last mentioned Roll and cause them to be so incorporated therewith, adapting their form and language to those of the said Statutes (but without changing their effect) inserting them in their proper places in the said Statutes, striking out of the latter any enactments repealed by or inconsistent with those so incorporated, altering the numbering of the chapters and sections if need be and adding to the said Schedule A a list of the Acts and parts of the Acts of the late Session of the said Legislative Assembly so incorporated as aforesaid, and also the Imperial Acts or parts of Imperial Acts for which the same shall be substituted; and also that so soon as the said incorporation of such Acts and parts of Acts with the said Statutes should be completed, Our Lieutenant-Governor might cause a corrected printed Roll thereof attested under his signature and countersigned by Our Provincial Secretary to be deposited in the Office of the Clerk of the Legislative Assembly; and that after the deposit of such last mentioned Roll, Our said Lieutenant-Governor might by Proclamation declare the day on from and after which the same should come into force and have effect as law by the designation of "The Revised Statutes of Ontario, 1897, Volume III;"

AND WHEREAS Our said Lieutenant-Governor has selected such Acts and parts of Acts passed during the said Session of the said Legislature of Our said Province, now last past, as he has deemed it advisable to be included in the said consolidation and the same have been incorporated therein;

AND WHEREAS Our said Lieutenant-Governor has caused the said corrected printed Roll attested under his signature and countersigned by Our Provincial Secretary to be deposited with the Clerk of the Legislative Assembly, and the provisions of the said recited Act have been duly carried into effect;

AND WHEREAS Our said Lieutenant-Governor, by and with the advice of the Executive Council of Our said Province has named the second day of June, 1902, as the day on, from and after which the said Consolidation as shewn in the said Roll shall come into force and have effect as law by the designation of "The Revised Statutes of Ontario, 1897, Volume III;"

NOW KNOW YE, that by and with the advice of the Executive Council of Our Province of Ontario, WE DO, by this Our Royal Proclamation, DECLARE THAT ON, FROM, AND AFTER THE SECOND DAY OF THE MONTH OF JUNE, 1902, the said Roll attested

under the signature of the Lieutenant-Governor of Our Province of Ontario and countersigned by the Provincial Secretary, and deposited in the Office of the Clerk of the Legislative Assembly of Our said Province as aforesaid, shall come into force and have effect as law by the designation of "THE REVISED STATUTES OF ONTARIO, 1897, VOLUME III," to all intents as though the same were expressly embodied in and enacted by the said Act.

OF ALL WHICH PREMISES all Our loving subjects of Our said Province and all others whom these presents may concern, are hereby required to take notice and govern themselves accordingly.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Our said Province of Ontario to be hereunto affixed: WITNESS, THE HONOURABLE SIR OLIVER MOWAT, Knight Grand Cross of Our Most Distinguished Order of Saint Michael and Saint George, Member of Our Privy Council for Canada, AND LIEUTENANT-GOVERNOR OF OUR PROVINCE OF ONTARIO, at Our Government House, in Our City of Toronto, in Our said Province, this twenty-ninth, day of May, in the year of Our Lord One thousand, nine hundred and two, and in the Second Year of Our Reign.

By Command,

J. R. STRATTON,

*Provincial Secretary.*

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## CHAPTER 13.

**An Act respecting the Imperial Statutes relating to property and civil rights incorporated into the Statute Law of Ontario.**

*Assented to 17th March, 1902.*

**Preamble.**

**W**HEREAS under and by virtue of divers Acts of the Provinces of Upper Canada, Canada, and of this Province, certain Imperial Statutes became part of, and were incorporated into, the Statute Law of this Province so far as the same were applicable to the circumstances thereof; and whereas, since the incorporation of such Statutes some of the same have become obsolete, or have in effect been superseded by subsequent legislation; and some of the said Statutes were enacted in Latin, or Norman French, or in language which has become antiquated and obscure; and whereas it is desirable that all such Imperial Statutes as relate to property and civil rights should be revised, classified, and consolidated, as part of the Revised Statutes of Ontario; and whereas such revision, classification, and consolidation have been made accordingly; and whereas it is expedient to include in such consolidation certain statutes of the present session passed in substitution, or amendment, of certain of the said Imperial Statutes:—

Therefore His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**Interpretation**

1. In this Act the words "Imperial Statutes" include Statutes made by the Parliament of England, of Great Britain, and of the United Kingdom of Great Britain and Ireland.

Printed roll attested by Lieutenant-Governor, etc, to be deemed original.

2. The printed roll attested as that of the said Statutes so revised, classified, and consolidated, as aforesaid, under the signature of His Honour the Lieutenant-Governor and that of the Clerk of the Legislative Assembly, and deposited in the office of the Clerk of the Legislative Assembly shall be held to be the original thereof, and to embody the several Acts and parts of Acts mentioned as to be repealed in the Schedule A thereto annexed; but the marginal notes thereon, and the references to former enactments at the foot of the several sections thereof, form no part of the said Statutes, and shall be held to have been inserted for convenience of reference only, and may be omitted or corrected, and any misprint or clerical error



error in the said roll may also be corrected in the roll hereinafter mentioned. [libtool.com.cn](http://libtool.com.cn)

3. The Lieutenant-Governor may select such Acts and parts of Acts passed during the present session, as he may deem it advisable to incorporate with the said statutes contained in the said roll and may cause them to be so incorporated therewith, adapting their form and language to those of the said statutes (but without changing their effect) inserting them in their proper places in the said statutes, striking out of the latter any enactments repealed by or inconsistent with those so incorporated, altering the numbering of the chapters and sections if need be, and adding to the said Schedule A a list of the Acts and parts of Acts of the present session so incorporated as aforesaid, and also the Imperial Acts, or parts of Imperial Acts, for which the same shall be substituted.

Incorporation of Acts passed at present session.

4. So soon as the said incorporation of such Acts and parts of Acts with the said statutes and the said addition to the said Schedule A shall have been completed, the Lieutenant-Governor may cause a correct printed roll thereof attested under his signature and countersigned by the Provincial Secretary to be deposited in the office of the Clerk of the Legislative Assembly, which roll shall be held to be the original thereof and to embody the several Acts and parts of Acts mentioned as repealed in the amended Schedule thereto annexed, and shall be deemed to include and comprise all provisions contained in any Imperial Statute relating to property and civil rights which have heretofore been incorporated into the statute law of this Province, and which at the time of the passing of this Act remained in force except only those referred to in Schedule C to the said consolidated Acts annexed. The marginal notes and references to former enactments shall be held to form no part of the said Statutes but to be inserted for convenience of reference only.

Roll to be deposited after incorporation of Acts passed at present session.

5. The Lieutenant-Governor in Council after such deposit of the last mentioned roll may by Proclamation declare the day on, from, and after, which the same shall come into force and have effect as law by the designation of "The Revised Statutes of Ontario, 1897, Volume III."

Proclamation bringing Acts into force.

6. On, from and after such day the same shall accordingly come into force and effect as law by the designation of "The Revised Statutes of Ontario, 1897, Volume III," to all intents as though the same were expressly embodied in and enacted by this Act to come into force and have effect on, from and after such day, and on, from and after the same day all the enactments in the said several Acts and parts of Acts in Schedule A to the said Roll mentioned as repealed shall stand and be repealed save only as hereinafter is provided.

Effect of proclamation.

Effect of  
repeal of  
former Acts.

7. The repeal of the said Acts and parts of Acts shall not revive any Act or provision of law repealed by them, nor shall the said repeal prevent the effect of any saving clause in the said Acts and parts of Acts or the application of any of the said Acts or parts of Acts or of any Act or provision of law formerly in force to any transaction, matter or thing anterior to the said repeal to which they would otherwise apply.

Matter not to  
be affected by  
repeal.

8.—(1) The repeal of the said Acts and parts of Acts shall not affect, defeat, disturb, or invalidate:—

Penalties,  
etc., incurred  
before repeal.

(a) Any penalty, forfeiture or liability incurred before the time of such repeal or any proceedings for enforcing the same had, done, completed, or pending, at the time of such repeal.

Judgments,  
actions, etc.

(b) Any action, proceeding, order, judgment, or process, or any other matter whatever respecting the same had, done, made, entered, granted, completed, pending, existing or in force at the time of such repeal.

Deeds, grants,  
rights, etc.

(c) Any act, deed, right, title, interest, grant, assurance, descent, will, registry, contract, lien, charge, matter or thing had, done, made, acquired, established or existing at the time of such repeal.

Officers, com-  
missions, etc.

(d) Any office, appointment, commission, salary, allowance, security, duty, or any matter or thing appertaining thereto at the time of such repeal.

Marriages.

(e) Any marriage certificate, or registry thereof, lawfully had, made, granted or existing before or at the time of such repeal.

Other  
matters.

(f) Any other matter or thing whatever had, done, completed, existing, or pending at the time of such repeal.

Saving clause.

(2) But every such  
Penalty, forfeiture and liability and every such  
Action, proceeding, order, judgment, process, or other matter  
respecting the same, and every such  
Act, deed, right, title, interest, grant, assurance, descent,  
will, registry, contract, lien, charge, matter or thing, and every  
such  
Office, appointment, commission, salary, allowance, security,  
and duty and every such  
Marriage certificate, and registry thereof, and every such  
other matter and thing, and the force and effect thereof respect-  
ively,

may and shall remain and continue as if no such repeal had taken place and as far as necessary may and shall be continued, prosecuted, enforced and proceeded with under the said "Revised Statutes of Ontario, 1897, Volume III," and other the statutes and laws having force in Ontario so far as applicable thereto and subject to the provisions of the said several statutes and laws.

(3) This Act shall not affect any principle or rule of law or equity, or established jurisdiction, or existing usage, franchise, liberty, custom, privilege, restriction, exemption, office, appointment, payment, allowance, or emolument, notwithstanding that the same respectively may in any manner be affirmed, recognized, or derived by, in, or from, any enactment hereby repealed.

(4) This Act shall not revive or restore any jurisdiction office, duty, drawback, fee, payment, franchise, liberty, custom, right, title, privilege, restriction, exemption, usage, practice, procedure, or other matter or thing not now existing or in force in this Province.

9. The said Revised Statutes, shall not be held to operate as new laws but shall be construed and have effect as a consolidation, and as declaratory, of the law as contained in the said Acts and parts of Acts so repealed, and for which the said Revised Statutes are substituted. Effects of consolidation and revising.

10. But if upon any point the provisions of the said Revised Statutes are not in effect the same as those of the repealed Acts and parts of Acts for which they are substituted, then as respects all transactions, matters and things subsequent to the time when the said Revised Statutes, Volume III, take effect the provisions contained therein shall prevail, and as respects all things anterior to the said time the provisions of the said repealed Acts and parts of Acts, so far as applicable to the circumstances of this Province shall prevail. Where revised Acts differ from former law.

11. Any reference in any former Act remaining in force or in any instrument, document or legal proceeding to any Act or enactment so repealed shall after the said Revised Statutes, Volume III, take effect, be held as regards any subsequent transaction, matter or thing to be a reference to the enactments in the said Revised Statutes, having the same effect as such repealed Act or enactment. References to Acts consolidated to refer to corresponding provisions.

12. The insertion of any Act in the said Schedule A or B shall not be construed as a declaration that such Act or any part of it was, or was not, in force immediately before the coming into force of the said Statutes. Effect of inserting Acts in Schedules.

13. *The Interpretation Act* shall apply to the construction of the said Revised Statutes, Volume III, and the statutes comprised in the said Volume III may be cited and referred to for all purposes in like manner as any other statute contained in the Revised Statutes of Ontario, 1897. Rev. Stat. c. 1 to apply in construing Statutes.

14. The Schedules A, B, and C, are to be read as referring to the revised edition of the Imperial Statutes prepared under the direction of the Imperial Statute Law Committee, and the chapters of the statutes passed before the division into separate Acts was customary are those indicated by the marginal numbers Schedule to refer to Revised Imperial Statutes.

Repeal to operate on original Statutes.

numbers given in that edition ; and the repeal by this Act of a Statute, or part of a Statute, set out or referred to in the terms of the translation given in that edition is to operate on the original Latin, or Norman French, of which the translation is set out or referred to, as if the original itself were in like manner set out or referred to.

Revised Statutes to be subject to the provisions of existing Statute Law.

15. Any Acts heretofore passed by the Legislature of this Province, or of the Province of Canada, in force in this Province at the time "The Revised Statutes of Ontario, 1897, volume III," shall come into force, shall not be deemed to be affected by the Acts contained in the said Volume III, but all of the Acts revised, and consolidated in the said Volume III, shall be read and construed as being made subject to the provisions of all Acts heretofore passed by the Legislature of this Province, or of the Province of Canada which are in force in this Province at the time the statutes comprised in "The Revised Statutes of Ontario, 1897, Volume III," take effect.

# REVISED STATUTES OF ONTARIO.

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## VOLUME III.

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### SECTION XVIII.

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#### CONSTITUTIONAL RIGHTS AND LIBERTIES OF THE PEOPLE.

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#### CHAPTER 322.

An Act respecting certain rights and liberties of the people.

**HIS MAJESTY**, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. A widow, after the death of her husband, may tarry Widow,  
in the chief house of her husband for forty days after the quarantine ;  
death of her husband, within which time her dower shall be dower.  
assigned her, if it has not been assigned her before, and in the  
meantime she shall have her reasonable maintenance; and for  
her dower shall be assigned unto her the third part of all the  
lands of her husband, which were his during coverture. 25  
Ed. 1, (Magna Carta) c. 7.

(See *R.S.O. c. 330, s. 6.*)

2. No man shall be taken or imprisoned, nor prejudged of Imprisonment  
etc., contrary  
to law.  
life or limb, nor be disseized or put out of his freehold, fran-  
chises, or liberties, or free customs, nor be outlawed, or exiled,  
or any otherwise destroyed, unless he be brought in to answer  
and prejudged of the same by due course of law; nor shall the Administra-  
tion of justice

King pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land : and the King shall sell to no man, nor deny or defer to any man, either justice or right. 25 Ed. 1, (Magna Carta) c. 29 ; 5 Ed. 3, c. 9 ; 25 Ed. 3, st. 5, c. 4 ; and 28 Ed. 3, c. 3.

Of wrongful  
distresses, or  
defiances of  
the King's  
Courts.

3. It is provided, agreed, and granted, that all persons, as well of high as of low estate, shall receive justice in the King's court ; and none from henceforth shall take any revenge or distress of his own authority, without award of the King's court, though he have damage or injury, whereby he would have amends of his neighbour, either higher, or lower. 52 Hen. 3, (St. of Marlbridge) c. 1.

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## CHAPTER 323.

### An Act concerning Monopolies, and Dispensation with penal laws, etc.

*Commonly called "THE STATUTE OF MONOPOLIES."*)

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. All monopolies, and all commissions, grants, licenses, charters, and letters patents, heretofore made or granted, or hereafter to be made or granted, to any person whatsoever, of or for the sole buying, selling, making, working, or using, of anything within this Province, or of any other monopolies, or of power, liberty, or faculty, to dispense with any others, or to give license or toleration to do, use or exercise anything against the tenor or purport of any law or statute, or to give, or make, any warrant for any such dispensation, license, or toleration, to be had or made, or to agree or compound with any others for any penalty or forfeitures limited by any statute, or of any grant or promise of the benefit, profit or commodity of any forfeiture, penalty or sum of money that is, or shall be, due by any statute, before judgment thereupon had, and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever any way tending to the instituting, erecting, strengthening, furthering, or countenancing, of the same, or any of them, are altogether contrary to the laws of this Province, and so are and shall be utterly void and of none effect, and in no wise to be put in use or execution. 21 Jac. 1, c. 3, s. 1.

All monopolies and grants, etc. thereof, or of dispensations, and penalties declared void.

2. All monopolies and all such commissions, grants, licenses, charters, letters patents, proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things tending as aforesaid, and the force and validity of them and every of them ought to be, and shall be forever hereafter examined, heard, tried and determined, by and according to the common law, and not otherwise. 21 Jac. 1, c. 3, s. 2.

Validity of all monopolies, and of all such grants, etc. shall be tried by the common law.

3. All persons whatsoever, shall stand and be disabled and incapable to have, use, exercise or put in use, any monopoly, or any such commission, grant, license, charters, letters patents,

All persons disabled to use such grants, monopolies, &c.

proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, or any liberty, power, or faculty, grounded, or pretended to be grounded, upon them, or any of them. 21 Jac. 1, c. 3, s. 3.

Party ag-  
grieved by  
any monopoly  
or grant, &c.,  
shall recover  
treble dam-  
ages by action  
in the High  
Court, with  
costs.

4. If any person shall be hindered, grieved, disturbed, or disquieted, or his goods or chattels any way seized, attached, distrained, taken, carried away, or detained, by occasion or pretext of any monopoly, or of any such commission, grant, license, power, liberty, faculty, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, and will sue to be relieved in or for any of the premises, then, and in every such case, the same person shall have his remedy for the same by action to be grounded upon this statute, the same action to be heard and determined in the High Court of Justice for Ontario against him by whom he shall be so hindered, grieved, disturbed, or disquieted, or against him by whom his goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained, wherein, all and every such person which shall be so hindered, grieved, disturbed, or disquieted, or whose goods or chattels shall be so seized, attached, distrained, taken, or carried away, or detained, shall recover three times so much as the damages which he sustained by means or occasion of being so hindered, grieved, disturbed, or disquieted, or by means of having his goods or chattels seized, attached, distrained, taken, carried away, or detained; and in such suits, or for the staying or delaying thereof, no privilege, injunction or order of restraint, shall be in anywise prayed, granted, admitted, or allowed; and no person shall, after notice given that the action depending is grounded upon this statute, cause or procure any action grounded upon this statute to be stayed, or delayed, before judgment, by colour or means of any order, warrant, power or authority, save only of the court wherein such action as aforesaid shall be brought and depending, or after judgment had upon such action, shall cause or procure the execution of, or upon, any such judgment to be stayed or delayed by colour or means of any order, warrant, power or authority, save only by due process of law. 21 Jac. 1, c. 3, s. 4.

Action not to  
be unduly  
delayed.

Proviso for  
patents for  
new inven-  
tions.

5. Provided also, that any declaration before mentioned shall not extend to any letters patents, and grants of privilege, made, or hereafter to be made, of the sole working or making of any manner of new manufactures within this Province, to the true and first inventor of such manufactures, which others at the time of making such letters patents and grants shall not use, so as also they be not contrary to the law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient; but the same shall be of such force as they should be if this Act had never been made, and of none other. 21 Jac. 1, c. 3, s. 6.



6. Provided also that this Act or anything therein contained shall not in any wise extend, or be prejudicial, to any grant, privilege, power, or authority whatsoever, heretofore made, granted, allowed, or confirmed, by any Act of Parliament now in force in this Province, so long as the same shall so continue in force. 21 Jac. 1, c. 3, s. 7.

Proviso for  
existing  
grants by  
Act of  
Parliament.

7. Provided also that this Act shall not extend to any warrant or Privy Seal made or directed, or to be made or directed by His Majesty, his heirs or successors, by the justices of the High Court of Justice, justices of the peace, and other justices for the time being, having power to hear and determine offences done against any penal statute, to compound for the forfeitures of any penal statute depending in suit and question before them, or any of them, respectively, after plea pleaded by the party defendant. 21 Jac. 1, c. 3, s. 8.

Proviso for  
warrants to  
justices to  
compound  
penalties.

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## SECTION XIX.

### ADMINISTRATION OF JUSTICE (2).

#### 1. PROCEDURE IN CIVIL MATTERS.

#### CHAPTER 324.

#### An Act respecting the Administration of Justice.

PLEADINGS TO BE IN ENGLISH, s. 1.	SPECIAL CASE, ss. 16-17.
DEMISE OF CROWN NOT TO CAUSE ABATEMENT, s. 2.	CONTEMPT, ss. 18-20.
SERVICE OF PROCESS ON THE LORD'S DAY FORBIDDEN, s. 3.	CHARGING ORDERS ON STOCKS, &C., ss. 21-23.
BONDS, ACTIONS ON, s. 4.	EXECUTION, <i>Ca. Sa.</i> , ss. 24-26.
SET OFF, ss. 5-7.	PENAL ACTIONS, ss. 27-29.
PAYMENT <i>post diem</i> , ss. 8-9.	MANDAMUS, PROCEDURE RESPECTING, s. 30.
ACCOUNT BY BAILIFFS, JOINT TENANTS, ETC., s. 10.	QUO WARRANTO, ss. 31-36.
RECORDS OF COURT, s. 11.	CERTIORARI, s. 37.
WITNESSES AND EVIDENCE, ss. 12-13.	LIMITATION OF ACTIONS OF TORT, ACCOUNT, &C., ss. 38-40.
PERPETUATING TESTIMONY, ss. 14-15.	LIMITATION OF ACTIONS BY THE CROWN, ss. 41-44.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

#### PLEADINGS TO BE IN ENGLISH.

**1.** All writs, pleadings and proceedings in any court of justice within Ontario, shall be in the English language only, but the proper or known names of writs or other process, or technical words, may be in the same language as hath been commonly used. 4 Geo. 2, c. 26, s. 1, and 6 Geo. 2, c. 14, s. 5, amended.

Writs, pleadings and proceedings in Courts of Law to be in English.

#### DEMISE OF CROWN.

**2.** No action, suit, or other proceeding, in any court of justice within Ontario, shall be discontinued or determined by reason of the demise of the Crown, but the same shall be proceeded with as if such demise had not happened. 1 Ed. 6, c. 7, s. 1, and 1 Anne c. 2, s. 4.

Demise of Crown not to affect pending suits.

## SERVICE OF PROCESS ON THE LORD'S DAY.

3. No person upon the Lord's day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree, (except in cases of treason, felony, or breach of the peace,) and the service of every such writ, process, warrant, order, judgment, or decree, on the Lord's Day, shall be void to all intents and purposes whatsoever, and the person so serving or executing the same shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree, at all. 29 Car. 2, c. 7, s. 6.

Service of process on the Lord's day (exception) void.

Persons serving same liable to action.

## ACTIONS ON BONDS.

4. In all actions commenced or prosecuted in any court upon any bond for non performance of any covenants or agreements in any indenture, deed, or writing, contained, the plaintiff may assign as many breaches as he shall think fit, and the jury, upon trial of such action, shall and may assess not only such damages and costs of suit as have heretofore been usually done in such cases, but also damages for such of the said breaches so to be assigned as the plaintiff upon the trial of the issues shall prove to have been broken, and the like judgment shall be entered as heretofore hath been usually done in such like actions; and, if judgment shall be given for the plaintiff by confession or default, the plaintiff may suggest as many breaches of the covenants and agreements as he shall think fit, and the damages that the plaintiff shall have sustained thereby shall be assessed; and in case the defendant after such judgment entered, and before any execution executed, shall pay into the court where the action shall be brought to the use of the plaintiff such damages so to be assessed by reason of all or any of the breaches of such covenants, together with the costs of suit, a stay of execution on the said judgment shall be entered upon record; or if, by reason of any execution executed, the plaintiff or his executors or administrators shall be fully paid or satisfied all such damages so to be assessed, together with his or their costs of suit, and all reasonable charges and expenses for executing the said execution, the body, lands or goods of the defendant shall be thereupon forthwith discharged from the said execution, which shall likewise be entered upon record; but notwithstanding in each case such judgment shall remain, continue, and be as a further security to answer to the plaintiff and his executors or administrators such damages as shall or may be sustained for further breach of any covenant or covenants in the same indenture, deed, or writing, contained, upon which the plaintiff may apply to the court in which said judgment is entered for leave to issue execution upon the said judgment against the defendant, or against his heir, or his executors, or administrators, suggesting other breaches of the said covenants or agreements, and to call upon him

In actions on bonds, &c, plaintiff may assign as many breaches as he pleases.

Damages may be assessed.

In what case of judgment for plaintiff, he may suggest as many breaches as he pleases.

Defendant paying damages and costs, execution may be stayed;

but judgment to remain to answer any further breach

and plaintiff may apply to issue execution against defendant,

or them respectively to shew cause why execution shall not be had or awarded upon the said judgment, upon which the court shall make such order as may be just; and upon payment, or satisfaction, in manner as aforesaid, of such future damages, costs and charges as aforesaid, all further proceedings on the said judgment are again to be stayed, and so *toties quoties*, and the defendant, his body, lands, or goods, shall be discharged out of execution as aforesaid. 8 & 9 W. 3, c. 11, s. 8.

and so *toties quoties*.

#### SET OFF.

Mutual debts to be set one against the other.

5. Where there are mutual debts between the plaintiff and defendant, or, if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other. 2 Geo. 2, c. 22, s. 13.

Mutual debts may be set off though one accrue by reason of penalty.

6. Mutual debts may be set against each other, notwithstanding that such debts are deemed in law to be of a different nature, unless in cases where either of the said debts shall accrue by reason of a penalty contained in any bond or specialty; and in all cases where either the debt for which the action is brought, or the debt intended to be set against the same, has accrued by reason of any such penalty, the debt intended to be set off shall be pleaded, and it shall be shown by the pleading how much is truly and justly due on either side; and in case the plaintiff shall recover in any such action, judgment shall be entered for no more than shall appear to be truly and justly due to the plaintiff after one debt being set against the other as aforesaid. 8 Geo 2, c. 24, s. 5.

Judgment only for balance due after set off.

7. If, upon a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant shall be entitled to judgment for the balance remaining due to him. (*See C. S. U. C. c. 22, s. 104 part.*) *New.*

Defendant to be entitled to judgment for balance due after set off.

#### PAYMENT POST DIEM.

Plea of payment in bar in action of debt, etc.

8. Where an action is brought upon any bill, or where action shall be brought upon any judgment, if the defendant hath paid the money due upon such bill or judgment, such payment may be pleaded in such action, and where an action is brought upon any bond which hath a condition or defeazance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors, or administrators, have, before the action brought, paid to the obligee, his executors or administrators the principal and interest due by the defeazance or condition of such bond, though such payment was not made strictly according to the condition or defeazance, yet it may nevertheless be pleaded in such action, and shall be as effectual a bar thereof, as if the money had



Majesty's Dominions, may be proved by the production of an exemplification thereof, or of the inrolment thereof, under the Great Seal under which the same may have issued, and such exemplification shall have the like force and effect for all purposes as the letters patent thereby exemplified, as well against His Majesty as against all other persons whomsoever. 3 & 4 Ed. 6, c. 4, and 13 Eliz., c. 6.

Witness disobeying subpoena liable to action.

13. A witness served in due time with a subpoena issued out of any court in Ontario, and paid his proper witness fees and conduct money, who shall make default in obeying such subpoena, without any lawful and reasonable impediment, shall, in addition to any penalty he may incur as for a contempt of court, be liable to an action on the part of the person by whom, or on whose behalf, he shall have been subpoenaed, for any damage which such person may sustain or be put to by reason of such default. 5 Eliz. c. 9, s. 6. •

#### PERPETUATING TESTIMONY.

Actions to perpetuate testimony may be brought by persons claiming honours, titles, etc. contingent on future events.

14. Any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any honour, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, shall be entitled to maintain an action in the High Court of Justice to perpetuate any testimony which may be material for establishing such claim or right; and all laws, rules, and regulations, not contrary to the provisions of this section, in force or in use in suits to perpetuate testimony, or respecting depositions taken in such actions in making such depositions, shall be in force and used and applied in all suits to be instituted under the authority of this section, and in respect to depositions taken in such action. Imp. Act 5 & 6 Vict. c. 69, s. 1.

Attorney-General to be party defendant in all such actions in which the King may have any estate or interest.

15. In all actions which may be so instituted under the authority of section 14, touching any honour, title, dignity, or office, or any other matter or thing in which His Majesty may have any estate or interest, it shall be lawful to make the Attorney-General a party defendant thereto; and in all proceedings in which the depositions taken in any such action in which the Attorney-General was so made a defendant may be offered in evidence, such depositions may be admissible notwithstanding any objection to such depositions upon the ground that His Majesty was not a party to the action in which such depositions were taken. Imp. Act, 5 & 6 Vict. c. 69, s. 2.

#### SPECIAL CASE.

Protection to be afforded to trustees by declaration.

16. Every executor, administrator, trustee, or other person, making any payment or doing any act in conformity with the

declaration contained in any judgment made upon a special case, shall in all respects be as fully and effectually protected and indemnified by such declaration as if such payment had been made, or act done, under, or in pursuance of, the express order of the Court made in a suit between the same parties instituted by writ of summons, save only as to any rights or claims of any person in respect of matters not determined by such declaration. Imp. Act, 13 & 14 Vict. c. 35, s. 15.

17. The filing of a special case shall be taken to be a *lis pendens*, and a certificate thereof may be registered under the provisions of *The Registry Act*. Imp. Act, 13 & 14 Vict. c. 35, s. 17. Special case to be a *lis pendens*, and may be registered.

#### CONTEMPT.

18. When any person shall have been directed by any judgment or order to execute any deed, or other instrument, or make a surrender, or transfer, and shall have refused or neglected to execute such deed, or instrument, or make, such surrender, or transfer, and shall have been committed to prison under process for such contempt, or, being confined in prison for any other cause, shall have been charged with or detained under process for such contempt, and shall remain in such prison, the Court may, upon motion or petition, and upon affidavit that such person has, after the expiration of fourteen days from the time of his being committed under, or charged with, or detained under such process, again refused to execute such deed or instrument, or make such surrender or transfer, order or appoint an officer of the Court to execute such deed or other instrument, or to make such surrender or transfer, for and in the name of such person; and the execution of the said deed or other instrument, and the surrender or transfer in his name made by the said officer, shall in all respects have the same force and validity as if the same had been executed or made by the party himself; and within ten days after the execution or making of any such deed or other instrument, or surrender, or transfer, notice thereof shall be given by the adverse solicitor to the party in whose name the same is executed, or made; and such party, as soon as the deed or other instrument, surrender, or transfer, shall be executed, shall be considered as having cleared his contempt, except as far as regards the payment of the costs of the contempt, and shall be entitled to be discharged from custody; and the Court shall make such order as shall be just, touching the payment of the costs of or attending any such deed, surrender, instrument, or transfer. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 36, s. 15, sub-s. 15. Court may appoint person to execute instrument for person in contempt.

19. Where a person shall be committed for a contempt in not delivering to any person, or depositing in court or else- Power of sequestrator in cases of contempt.

where, as by any order may be directed, books, papers, or any other articles or things, any sequestrator appointed under any commission of sequestration shall have the same power to seize and take such books, papers, writings, or other articles or things, being in the custody or power of the person against whom the sequestration issues, as he would have over his own property; and thereupon such articles or things so seized and taken shall be dealt with by the Court as shall be just; and after such seizure it shall be lawful for the Court, upon the application of the prisoner, or of any other person in the cause or matter, or upon any report, to make such order for the discharge of the prisoner, upon such terms, as to costs and otherwise, as to the Court shall seem proper. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 36, s. 15, sub-s. 16.

Court may discharge prisoners confined for contempt.

20. Where any person committed for a contempt shall be entitled to his discharge upon applying to the Court, but shall omit to make such application, the Court may, upon any such report, compulsorily discharge such person from the contempt, and from custody, and pay the costs of the contempt out of any funds belonging to him over which the Court may have power, or make them costs in the cause as against him. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 36, s. 15, sub-s. 18.

#### CHARGING ORDERS ON STOCKS, ETC.

Stock and shares in public funds, and public companies, belonging to the debtor, and standing in his own name, to be charged by order of a Judge.

21. If a person, against whom a judgment shall have been entered up in any of His Majesty's Courts in Ontario, shall have any Government stock, funds or annuities, or any stock, or shares, of, or in, a public company in Ontario, (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of the High Court of Justice, on the application of any judgment creditor, to order that such stock, funds, annuities, or shares, or such of them, or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor; provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order. Imp. Act, 1 & 2 Vict. c. 110, s. 14.

Order of Judge to be made in the first instance *ex parte*, and on notice to the bank or company to operate as an

22. Every such order charging any Government stock, funds, or annuities, or any stock or shares in any public company, shall be made in the first instance *ex parte*, and without any notice to the judgment debtor, and shall be an order to show cause only; and such order, if any Government stock, funds, or annuities, standing in the name of the



judgment debtor in his own right, or in the name of any person in trust for him, is to be affected by such order, shall restrain any transfer of such stock being made in the meantime and until such order shall be made absolute or discharged; and if any stock or shares of, or in, any public company, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such public company from permitting a transfer thereof; and if, after notice of such order to the person to be restrained thereby, or, in case of corporations, to any authorized agent of such corporation, and before the same order shall be discharged or made absolute, such corporation or person shall permit any such transfer to be made, then and in such case the corporation, or person, so permitting such transfer, shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and unless the judgment debtor shall, within a time to be mentioned in such order, show to a Judge sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his solicitor or agent be made absolute; Provided that any such Judge shall, upon the application of the judgment debtor, or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit. Imp. Act, 1 & 2 Vict. c. 110, s. 15.

**23.** Sections 21 and 22 of this Act shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent as well in any such stocks, funds, annuities, or shares as aforesaid, as also in the dividends, interest, or annual produce, of any such stocks, funds, annuities, or shares; and whenever any such judgment debtor shall have any estate, right, title, or interest, vested or contingent, in possession, remainder, or reversion, in, or to stocks, funds, annuities, or shares, standing in the name of the Accountant of the Supreme Court of Judicature for Ontario, or in, or to, the dividends, interest, or annual produce thereof, it shall be lawful for such Judge to make any order as to such stock, funds, annuities, or shares, or the interest, dividends or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor; Provided always, that no order of any Judge as to any stock, funds, annuities, or shares, standing in the name of the said Accountant, or as to the interest, dividends, or annual produce thereof, shall prevent any incorporated bank, or any public company, from permitting any transfer of such stocks, funds, annuities, or shares, or payment of the interest dividends or annual produce thereof, in such manner as the

Provisions as to property of judgment debtors defined and extended.

High Court of Justice may direct, or shall have any greater effect than if such debtor had charged such stock, funds, ~~annuities, or shares,~~ or the interest, dividends, or annual produce thereof, in favor of the judgment creditor, with the amount of the sum to be mentioned in any such order. Imp. Act, 3 & 4 Vict. c. 82, s. 1.

EXECUTION, *Capias ad Satisfaciendum.*

Person discharged from arrest on ground of privilege may be rearrested when privilege ceases.

24.—(1) Where a member of the Parliament of Canada, or of the Legislative Assembly of Ontario, is discharged from arrest under a writ of *capias ad satisfaciendum*, by reason of privilege, the party at whose suit such writ was issued may sue forth and execute a new writ as soon as such privilege shall have ceased, as if no former writ had issued. 1 Jac. 1, c. 13, amended.

No action against bailiff for discharge of privileged person.

(2.) No sheriff, or bailiff, or other officer, shall be chargeable with or by any action for delivering out of execution any such privileged person so taken in execution as aforesaid. 1 Jac. 1, c. 13, amended.

After the death of a debtor charged in execution, creditor may sue out a new execution against deceased's lands and goods.

25. The party at whose suit, or to whom any person shall stand charged in execution for any debt or damages recovered, his executors or administrators, may, after the death of the said person so charged, and dying in execution, lawfully sue forth and have new execution against the lands and tenements, goods and chattels, or any of them, of the person so deceased, in such manner and form to all intents and purposes as he might have, if such person so deceased had never been taken or charged in execution. 21 Jac. 1, c. 24, s. 1.

Prisoner in execution escaping may be retaken by any new *capias*, etc.

26. If a prisoner who is or shall be committed in execution to any prison shall escape from thence by any means howsoever, the creditor at whose suit such prisoner was charged in execution, at the time of his escape, may retake such prisoner by any new *capias ad satisfaciendum*, or sue forth any other kind of execution on the judgment, as if the body of such prisoner had never been taken in execution. 8 & 9 W. 3, c. 27, s. 7.

PENAL ACTIONS.

In penal action if prior judgment set up, plaintiff may reply fraud.

27. In any penal action brought in good faith in which the defendant sets up a prior judgment, the plaintiff may reply in avoidance of such judgment that such prior judgment was had by covin or collusion; and no release by any person before or after action for a penalty shall be a ground for staying such action. Provided that no plaintiff in any such action shall be permitted to set up by way of reply, or otherwise, any charge of covin or collusion as aforesaid, where the merits of the matter in question in the said action, or a like charge of covin or collusion, shall have been once tried, and found either for, or against, the plaintiff. 4 Hen. 7, c. 20.

28. No person shall sue as a common informer in a penal action unless he be *sui juris*. 18 Eliz. c. 5.

Informer must be *sui juris*.

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29. No penal action brought by a common informer shall be compounded without the leave of the Court. 18 Eliz. c. 5.

Compounding: penal action.

#### MANDAMUS.

30.—(1) For Rule 1085 of the Supreme Court of Judicature for Ontario the following provision is substituted :

"1085. Where an order of *mandamus* shall be issued, the person required to make a return thereto shall, on being duly served therewith, make his return thereto as thereby required, on pain of being proceeded against for contempt of Court." (See 9 Anne, c. 25 (or c. 20 in Ruffhead's Ed.), s. 1.)

*Mandamus*, return to.

(2) Rule 1087 of the said Supreme Court is amended by adding thereto the following sub-sections :

"2. Where the person to whom an order of *mandamus* is directed shall be found by the Court or a Judge to have made a false or insufficient return thereto, the Court or a Judge may order the person making such false or insufficient return to pay to the party prosecuting such order any damages occasioned by such false or insufficient return, to be assessed by such Court or Judge, or otherwise as may be directed. (See 9 Anne, c. 25 (or c. 20 in Ruffhead's Ed.), s. 2.)

False return.

3. In case damages are awarded under this Rule, the person against whom the same are awarded shall not be liable to be sued in any other action for the making of such return. (See 9 Anne, c. 25, (or c. 20 in Ruffhead's Ed.), s. 3.)" 2 Ed. 7, c. 1, s. 10.

Damages for false return.

#### QUO WARRANTO PROCEEDINGS.

31. Except in the cases mentioned in sections 35 and 36 of this Act, all proceedings against any person who unlawfully claims, or usurps, or is alleged unlawfully to claim, or to usurp, any office, franchise, or liberty, or who has forfeited, or is alleged to have forfeited any franchise, by reason of non-user, or misuser, thereof, which have heretofore been instituted or taken by writ of *quo warranto*, or by information in the nature of a writ of *quo warranto*, hereafter shall be instituted and taken, where the proceeding is by the Attorney-General *ex officio* without a relator, by notice of motion; and, where the proceeding is taken at the instance of some person as relator, by order *nisi*, calling on the person against whom the proceeding is taken to show cause why he unlawfully exercises, or usurps, such office, franchise, or liberty. 2 Ed. 7, c. 1, s. 11.

*Quo warranto*, writ of, super-seeded, in certain cases,—proceedings in lieu of.

Motion, or order *nisi*.

32. Where the proceeding is at the instance of a relator it shall be taken in the name of His Majesty on the relation of such person, and such person shall, before making the applica-

Where relator named, proceedings how framed.

Relator to give security.

tion for an order *nisi*, give security for the due and effectual prosecution thereof, in like manner as nearly as may be and in the like amount as is, according to the practice of the High Court of Justice, required to be given on an application to the said Court to quash a conviction or order made by a Justice of the Peace, or in such manner and amount as the said Court may direct. 2 Ed. 7, c. 1, s. 12.

Issue may be directed, or injunction, etc., granted.

33. The Court may, if in its discretion it seems meet, direct an issue for the trial of the matters in question on any such application, and may grant an injunction, or a mandatory order, in aid of the proceedings, or for the purpose of enforcing the judgment or order which shall be pronounced thereon. 2 Ed. 7, c. 1, s. 13.

Practice, and appeals.

34. The practice and procedure, including the right of appeal, shall be, in all other respects, in accordance with the ordinary practice and procedure of the High Court of Justice. 2 Ed. 7, c. 1, s. 14.

Municipal and school officers.

35. Where it is intended to call in question the right of any person claiming to be a Municipal officer, or an officer of a School Corporation, to the office which he claims to hold, exercise, or occupy, as such officer, or the right of a member of any School Board, or School Corporation, to have, hold, or enjoy, any office, either as a member of such Board, or Corporation, or otherwise under the School Laws of this Province, and the provisions of section 36 of this Act do not apply to the trial and determination of such question, the matter shall be tried and determined by the Judge of the County Court of the County in which the duties of the office are to be performed, in a summary manner, and the proceedings shall be the same, as nearly as may be, as those provided for trying and determining a complaint respecting the validity or mode of conducting the elections of school trustees in an urban municipality, excepting that such Judge shall have the same power to award costs, in his discretion, to either party to the proceedings as he would have if the same were a proceeding in the County Court. 2 Ed. 7, c. 1, s. 15.

Where other special statutory provision, this Act not to apply.

36. Nothing in the five preceding sections contained shall apply to, or affect, the proceedings in cases for which special provision is made by the Municipal or School laws of this Province, but in all such cases the proceedings shall be instituted and taken in the manner provided by the said Acts, and not otherwise. 2 Ed. 7, c. 1, s. 16.

#### CERTIORARI.

Order of certiorari, how to be applied for.

37. And for the better preventing vexatious delays and expense, occasioned by the suing forth orders of *certiorari* for the removal of convictions, judgments, orders, and other proceedings, before justices of the peace, no order of *certiorari* shall be

granted, issued forth, or allowed, to remove any conviction, judgment, order, or other proceedings had or made by or before any justice of the peace of any county, or the general or quarter sessions thereof, unless such *certiorari* be moved, or applied for, within six calendar months next after such conviction, judgment, order, or other proceedings, shall be so had or made, and unless it be duly proved upon oath, that the said party suing forth the same hath given six days' notice thereof in writing to the justice or justices, or to two of them (if so many there be) by and before whom such conviction, judgment, order, or other proceeding, shall be so had or made, to the end that such justice or justices, or the parties therein concerned, may shew cause, if he or they shall so think fit, against the issuing or granting such *certiorari*. 13 Geo. 2, c. 18, s. 5.

#### LIMITATION OF ACTIONS.

**38** The actions hereinafter mentioned shall be commenced within, and not after, the times respectively hereinafter mentioned, that is to say : Limitation of actions.

- (1). Actions upon the case for words, within two years after the words spoken. Slander.
  - (2). Actions for assault, battery, wounding, or imprisonment, or any of them, within four years after the cause of such actions arose. Assault, etc.
  - (3). Actions for trespass to goods or lands, debt grounded upon any lending or contract without specialty, debt for arrearages of rent, detinue, replevin, or upon the case other than for slander, within six years after the cause of such actions arose. Trespass, etc.
- 21 Jac. 1, c. 16, s. 3.

**39**. In case a person entitled to such action as aforesaid is, at the time the cause of action accrues, within the age of twenty-one years, or *non compos mentis*, then such person may bring the action within such time after coming to, or being of, full age, or of sound memory, as other persons having no such impediment should, according to the provisions of this Act, have done. Infants, etc. may bring actions within the several periods after their disability ceases. 21 Jac. 1, c. 16, s. 7.

**40**. If a person against whom any such cause of action as aforesaid accrued is, at such time, out of Ontario, the person entitled to the cause of action may bring the action within such times as are before limited, after the return of the absent person to Ontario. Persons out of Ontario 4 & 5 Anne, c. 3 (or c. 16, in Ruffhead's Ed.), s. 19.

## LIMITATION OF ACTIONS BY THE CROWN.

No entry by Crown after 60 years from time right accrued.

**41.** No entry, distress, or action, information, or other proceeding, shall hereafter be made, filed, or brought, on behalf of His Majesty, against any person for the recovery of, or respecting, any lands tenements or hereditaments, or for, or concerning, any revenues, rents, issues or profits thereof, but within sixty years next after the right to make such entry, distress, or make, bring, or file, such action, information, or proceeding, shall have first accrued to His Majesty. (*See 9 Geo. 3, c. 16.*) 2 Ed. 7, c. 1, s. 17.

When right of entry to be deemed to have first accrued.

**42** In the construction of this Act, the right to make an entry or distress, or bring, or file, or commence, an action, information, or other proceeding, shall be deemed to have first accrued as hereinafter mentioned.

Land or rent.

(i.) Where land or rent is claimed, if His Majesty shall have been in possession, or in receipt of, such land, or rent, and shall, while entitled thereto, have been dispossessed, or have discontinued such possession, or receipt, then such right shall be deemed to have first accrued at the time of such dispossession, or discontinuance of possession, or at the last time when such rents or profits were received.

Reversion or remainder.

(ii.) When the estate or interest claimed by His Majesty shall have been an estate or interest in reversion, or remainder, or other future estate or interest, and His Majesty shall not have obtained possession, or receipt of the profits, of such land, or the receipt of such rent, such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession.

Forfeiture.

(iii.) When any right to make an entry, or distress, or to bring, file, or commence, an action, information, or other proceeding, to recover any land, or rent, by reason of any forfeiture or condition, shall have first accrued in respect of any estate or interest to which His Majesty is entitled in reversion, or remainder, and the land, or rent, shall not have been recovered by virtue of such right, the right to make an entry, or distress, or bring an action to recover such land, or rent, by His Majesty, shall be deemed to have first accrued in respect of such estate or interest at the time when the same became an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

Where acknowledgment is given.

(iv.) When any acknowledgment in writing of the title of His Majesty to any land, rent, revenues, rents, issues or profits, shall have been given to him or his agent, signed by the person in possession of, or in receipt of, such land, or the rents, issues or profits thereof, or liable to pay such revenue due to His Majesty, the right to make an entry, or distress, or bring, file, or commence, an action, information, or other proceeding, to recover any such land, rent, issues, profits, or revenue, as against the person giving such acknowledgment, or any person claim-

ing under him, shall be deemed to have first accrued at, and not before, the time when such acknowledgment, or the last of such acknowledgments, if more than one, was given. (See *9 Geo. 3, c. 16.*) 2 Ed. 7, c. 1, s. 18.

**43.** Sections 41 and 42 of this Act shall not apply to any waste lands of the Crown. 2 Ed. 7, c. 1, s. 19. Waste lands  
excepted.

**44.** Section 2 of *The Real Property Limitations Act* shall extend to sections 41 and 42, so far as applicable. 2 Ed. 7, c. 1, s. 20. Sec. 2 of Rev.  
Stat. c. 133, to  
apply.

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2. ADMINISTRATION OF JUSTICE IN CRIMINAL MATTERS.

1 *Justices of the Peace.*

CHAPTER 325.

An Act enabling Justices to administer oaths.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**In all cases where penalties, etc. are directed to be levied under Acts, justices are empowered to administer oaths, etc. for levying such penalties, etc.**

1. In all cases where any penalty is directed to be levied, or distress to be made, by any Statute now in force, or hereafter to be made, it shall and may be lawful for any justice or justices acting under the authority of such Acts respectively, and he and they is and are hereby authorized and empowered to administer an oath or oaths, affirmation or affirmations, to any person or persons, for the purpose of levying such penalties, or making such distresses respectively. 15 Geo. 3. c. 39.



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2. *Constables.*

## CHAPTER 326.

### An Act respecting Actions Against Constables.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. No action shall be brought against any constable, or other officer, or against any person acting by his order and in his aid, for anything done in obedience to any warrant under the hand or seal of any justice of the peace, until demand hath been made or left at the usual place of his abode by the party intending to bring such action, or by his attorney or agent, in writing signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused and neglected for the space of six days after such demand; and in case after such demand, and compliance therewith, by shewing the said warrant to, and permitting a copy to be taken thereof by, the party demanding the same, any action shall be brought against such constable, or other officer, or against such person acting in his aid for any such cause as aforesaid, without making the justice who signed or sealed the said warrant defendant, then, on producing and proving such warrant at the trial of such action, judgment shall be given for the defendant, notwithstanding any defect of jurisdiction in such justice; and if such action be brought jointly against such justice and such constable, or other officer or person acting in his or their aid as aforesaid, then, on proof of such warrant, judgment shall be given for such constable, or other officer, and for such person so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the judgment shall be given against the justice or justices, then in such case the plaintiff shall recover his costs against him, or them, to be taxed in such manner by the proper officer as to include such costs as such plaintiff is liable to pay to such defendant for whom judgment shall be given as aforesaid. 24 Geo. 2, c. 44, s. 6.

Action not to be brought against any constable acting in obedience to Justices warrant, till demand made of the sight and copy of the warrant, and refusal thereof, etc.

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## SECTION XX.

### MISCELLANEOUS OFFENCES.

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#### CHAPTER 327.

#### An Act respecting Champerty.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Definition of  
Champertors.

1. Champertors be they that move pleas and suits, or cause to be moved, either by their own procurement, or by others, and sue them at their proper costs, for to have part of the land in variance, or part of the gains. 33 Ed. 1.

Champertous  
agreements  
void.

2. All champertous agreements are forbidden, and invalid. (*New.*)

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## CHAPTER 328.

### An Act respecting Buying and Selling Offices. (a).

**HIS MAJESTY**, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. If any person at any time hereafter bargain or sell any office, or deputation of any office, or any part of them, or receive have or take any money, fee, reward, or any other profit, directly or indirectly, or take any promise, agreement, covenant, bond, or any assurance, to receive or have any money, fee, reward, or other profit, directly or indirectly, for any office, or for the deputation of any office, or any part thereof, or to the intent that any person should have exercise or enjoy any office, or the deputation of any office, or any part thereof, which office, or any part thereof, shall in any-wise concern the administration or execution of justice, or the receipt or payment of any moneys or revenue due to the Crown, or which shall concern or touch any clerkship to be occupied in any manner of court of record wherein justice is to be ministered, that then all and every such person that shall so bargain or sell any such office, or deputation, or that shall take any money, fee, reward, or profit, for any such office, or deputation of any such office, or any part, thereof, or that shall take any promise, covenant, bond, or assurance for any money, reward or profit to be given, for any such office, or deputation of such office, or any part thereof, shall not only lose and forfeit all his right, interest, and estate, which such person shall then have, of, in, or to, any such office, or deputation, or any part thereof, or of, in, or to, the gift or nomination of the said office, or deputation thereof, for the which office, or for the deputation of which office, or for any part thereof any such person shall so make any bargain or sale, or take or receive any sum of money, fee, reward, or profit, or any promise, covenant, or assurance, to have or receive any fee, reward, money, or profit; but also that all and every such person that shall give or pay any sum of money, reward, or fee, or shall make any promise,

Penalty on selling any office, or receiving or agreeing to receive money, etc. for any office concerning the administration of justice, or the receipt or control of the King's revenue, or any clerkship in any court of record;

on the seller, forfeiture of all title to: he office sold;

on the buyer, disability to hold such office bought, etc.

(a) The 5 & 6 Ed. 6, c. 16, was expressly extended to the colonies by Imp. Act 49 Geo. 3, c. 126. It is in force besides by virtue of colonial legislation, and is consolidated here as a Provincial statute with the modification made therein by 49 Geo. 3, c. 126. see Reg. Mercer 17 U. C. R. 602; Reg. Moodie, 20 U. C. R. 389.

agreement, bond, or assurance, for any such office, or for the deputation thereof, or any part thereof, shall immediately by, and upon, the same fee, money or reward given or paid, or upon any such promise, covenant, bond, or agreement, had or made for any fee, sum of money, or reward, to be paid as aforesaid, be adjudged a disabled person in the law, to all intents and purposes, to have, occupy or enjoy the said office, or deputation, or any part thereof, for the which such person shall so give, or pay, any sum of money, fee, or reward, or make any promise, covenant, bond, or other assurance, to give or pay any sum of money, fee, or reward. 5 & 6 Ed. 6, c. 16, s. 1.

All such sales and agreements, etc. declared void.

2. And all and every such bargains, sales, promises, bonds, agreements, covenants, and assurances, as be before specified, shall be void to and against him and them by whom any such bargain, sale, bond, promise, covenant, or assurance, shall be had, or made. 5 & 6 Ed. 6, c. 16, s. 2.

Acts done by any officer offending, before his removal declared valid.

3. Provided also that if any person do hereafter offend in anything contrary to the tenor and effect of this Act, yet that, notwithstanding, all judgments given and all other act, and acts, executed, or done, by any such person so offending, by authority, or colour, of the office, or deputation, which ought to be forfeited, or not occupied, or not enjoyed, by the person so offending as aforesaid, after the said offence so by such person committed, or done, and before such person so offending for the same offence be removed from the exercise, administration, and occupation, of the said office, or deputation, shall be, and remain, good and sufficient in law to all intents, construction, and purposes, in such like manner and form as the same should and ought to have remained and been, if this Act had never been had or made. 5 & 6 Ed. 6, c. 16, s. 4.

Act not to extend to deputations where it is lawful to appoint deputies, or to agreements as to payment of principal or deputy out of the fees.

4. Provided also, that nothing in this Act contained shall extend, or be construed to extend, to prevent, or make void, any deputation to any office in any case in which it is lawful to appoint a deputy, or any agreement, contract, bond, or assurance lawfully made in respect of any allowance, salary, or payment made, or agreed to be made, by, or to, such principal, or deputy, respectively, out of the fees or profits of such office. (*See Imp. Stat. 49 Geo 3, c. 126, s. 10*).

Act not to extend to annual payments out of the fees of any office to any former holder;

5. Provided also, that nothing in this Act contained shall extend to any annual reservation, charge, or payment made, or required to be made, out of the fees, perquisites, or profits of any office, to any person who shall have held such office, in any commission or appointment of any person succeeding to such office, or to any agreement, contract, bond or other

assurance, made for securing such reservation, charge, or payment: Provided always, that the amount of such reservation, charge, or payment, and the circumstances and reasons under which the same shall have been permitted shall be stated in the commission, patent, warrant, or instrument, of appointment of the person so succeeding to, and holding such office, and paying, or securing, such money as aforesaid. (See *Imp. Stat. 49 Geo. 3, c. 126, s. 11.*)

amount of,  
and reasons  
for, such pay-  
ment to be  
stated.

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## CHAPTER 329.

### An Act for the better preventing of excessive and deceitful Gaming.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Security given for money, etc., won by gaming, or for repayment of money lent for gaming, to be deemed to have been given for illegal consideration.

1. All notes, bills, bonds, judgments, mortgages, or other securities, or conveyances whatsoever, given, granted, drawn, or entered into, or executed, by any person, where the whole, or any part of, the consideration of such conveyances or securities shall be for any money, or other valuable thing whatsoever, won by gaming, or playing at cards, dice, tables, tennis, bowls, or other game or games whatsoever, or by betting on the sides or hands of such as do game at any of the games aforesaid, or for the reimbursing, or repaying, any money knowingly lent or advanced for such gaming, or betting, as aforesaid, or lent, or advanced, at the time and place of such play, to any person so gaming, or betting, as aforesaid, or that shall, during such play, so play, or bet, shall be deemed to have been made, drawn, accepted, given, or executed, for an illegal consideration. 9 Anne. c. 19, (or c. 14. in Ruffhead's Ed.) s. 1, as amended by 2, Ed. 7, c. 1, s. 8.

Money paid to the holder of such securities shall be deemed to be paid on account of the person to whom the same was originally given.  
Imp. Act, 5 & 6 W. 4, c. 41, s. 2.

2. In case any person shall make, draw, give, or execute, any note, bill, or mortgage, for any consideration which is hereinbefore declared to be illegal, and such person shall actually pay to any indorsee, holder, or assignee, of such note, bill, or mortgage, the amount of the money thereby secured, or any part thereof, such money so paid shall be deemed and taken to have been paid for, and on account of, the person to whom such note, bill, or mortgage, was originally given upon such illegal consideration as aforesaid, and shall be deemed and taken to be a debt due, and owing, from such last named person to the person who shall so have paid such money, and shall accordingly be recoverable by action. 2 Ed. 7, c. 1, s. 9.

When money lost at one sitting is \$40 the same may be recovered by loser, by action.

3. Any person who shall, at any time or sitting, by playing at cards, dice, tables, or other game or games whatsoever, or by betting on the sides or hands of such as do play at any of the games aforesaid, lose to any person so playing, or betting, in the whole the sum or value of forty dollars, and shall pay or deliver the same or any part thereof, the person so losing

and paying or delivering the same shall be at liberty, within three months then next, to sue for, and recover, the money or goods so lost, and paid, or delivered, or any part thereof, from the respective winner thereof, with costs of suit, by action, founded on this Act, to be prosecuted in any of His Majesty's courts of record, in which actions no privilege of Parliament shall be allowed, and in which actions it shall be sufficient for the plaintiff to allege that the defendant is indebted to the plaintiff, or received to the plaintiff's use, the monies so lost and paid, or converted the goods won of the plaintiff to the defendant's use, whereby the plaintiff's action accrued to him according to the form of this statute, without setting forth the special matter. And in case the person who shall lose such money, or other thing, as aforesaid, shall not, within the time aforesaid, really and *bonâ fide*, and without covin or collusion, sue, and with effect prosecute, for the money or other thing so by him lost, and paid, or delivered, as aforesaid, it shall and may be lawful to and for any person, by any such action or suit as aforesaid, to sue for, and recover, the same and treble the value thereof, with costs of suit against such winner as aforesaid, the one moiety thereof to the use of the person that will sue for the same, and the other moiety to the use of His Majesty. 9 Anne, c. 19 (or c. 14 in Ruffhead's Ed.) s. 2.

What will be a sufficient allegation in such action.

Treble value recovered with costs.

4. Provided always that upon the repayment of the money or other thing so won as aforesaid before action, the person who shall so repay the same as aforesaid shall be acquitted, indemnified, and discharged, from any further or other punishment, forfeiture, or penalty, which he may have incurred by the playing for, or winning, such money, or other thing, so repaid as aforesaid; any former or other statute, law, or usage, or any thing in this present Act contained, to the contrary thereof in any wise notwithstanding. 9 Anne, c. 19, (or c. 14 in Ruffhead's Ed.) s. 4.

Party repaying such money before action free from further penalty.

www.libtool.org SECTION XXII.

LAW OF PROPERTY (2).

1. LAW OF PROPERTY IN GENERAL.

CHAPTER 330.

An Act respecting Real Property.

<p>Statute <i>De donis conditionalibus</i>, s. 1.          Statute <i>Quia emptores</i>, ss. 2-4.          CURTESY, s. 5.          DOWER, AND QUARANTINE, ss. 6-9.          POSTHUMOUS CHILDREN, RIGHTS OF, s. 10.          WARRANTIES ABOLISHED, s. 11.          COVENANTS RUNNING WITH REVERSION, ETC., ss. 12-13.</p>	<p>PRODUCTION OF <i>cestuis que vie</i>, AND TENANTS FOR LIFE, ss. 14-20.          WASTE, ss. 21-23.          POWERS, LEASES UNDER, ss. 24-30.          POWERS, ILLUSORY APPOINTMENTS UNDER, ss. 31-33.          LEASES BY TENANTS IN TAIL, ss. 34-35.          INTERPRETATION CLAUSE OF R.S.O. c. 119, TO APPLY, s. 36.</p>
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**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:—

Several sorts of gifts of lands upon condition:

1. First, concerning lands that many times are given upon condition, that is to wit, where any giveth his land to any man and his wife, and to the heirs begotten of the bodies of the same man and his wife, with such condition expressed that if the same man and his wife die without heirs of their bodies between them begotten, the land so given shall revert to the giver or his heir: In case also where one giveth lands in free marriage, which gift hath a condition annexed, though it be not expressed in the deed of gift, which is this, that if the husband and wife die without heir of their bodies begotten, the land so given shall revert to the giver or his heir: In case also where one giveth land to another, and the heirs of his body issuing; it seemed very hard, and yet seemeth to the givers and their heirs, that their will being expressed in the gift, was not heretofore, nor yet is observed: In all the cases aforesaid, after issue begotten and born between them, to whom the lands were given under such condition, heretofore such feoffees had power to alien the land so given, and to disinherit their issue of the land, contrary to the minds of the givers, and contrary to the form expressed in the gift: And further, when the issue of such feoffee is failing, the land so given



given ought to return to the giver, or his heir, by form of the gift expressed in the deed; though the issue, if any were, had died: Yet by the deed and feoffment of them to whom land was so given upon condition, the donors have heretofore been barred of their reversion, which was directly repugnant to the form of the gift: Wherefore . . . it is ordained that the will of the giver, according to the form in the deed of gift manifestly expressed, shall be from henceforth observed; so that they to whom the land was given under such condition, shall have no power to alien the land so given, but that it shall remain unto the issue of them to whom it was given after their death, or shall revert unto the giver or his heirs, if issue fail, either by reason that there is no issue at all, or if any issue be, and fail by death, or heir of the body of such issue failing. Neither shall the second husband of any such woman, from henceforth, have anything in the land so given upon condition, after the death of his wife, nor the issue of the second husband and wife shall succeed in the inheritance, but immediately after the death of the husband and wife, to whom the land was so given, it shall come to their issue, or return unto the giver, or his heir, as before is said. 13 Ed. 1, (St. of Westminster Sec.) c. 1, (commonly called "The Statute *De Donis Condition-alibus*").

In such gifts the donor's will shall be observed.

2. Forasmuch as purchasers of lands and tenements of the fees of great men and other lords, have many times heretofore entered into their fees, to the prejudice of the lords to whom the freeholders of such great men have sold their lands and tenements to be holden in fee of their feoffors, and not of the chief lords of the fees, whereby the same chief lords have many times lost their escheats, marriages, and wardships of lands and tenements belonging to their fees; which thing seemed very hard and extreme unto those lords and other great men, and moreover in this case manifest disinheritance: It is therefore provided, and ordained, that from henceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or part of them, so that the feoffee shall hold the same lands or tenements of the chief lord of the same fee, by such service, and customs as his feoffor held before. 18 Ed. 1, c. 1, (commonly called "The Statute *Quia Emptores*").

Freeholders may sell their lands so that the feoffee do hold of the chief lord.

3. And if he sell any part of such lands or tenements to any, the feoffee shall immediately hold it of the chief lord, and shall be forthwith charged with the services, for so much as pertaineth, or ought to pertain to the said chief lord for the same parcel, according to the quantity of the land or tenement so sold: And so in this case the same part of the service shall remain to the lord, to be taken by the hands of the feoffee, for the which he ought to be attendant and answerable to the

Sale of part.

Apportionment of services.

same

same chief lord, according to the quantity of the land or tenement sold, for the parcel of the service so due. 18 Ed. 1, c. 2.

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**Mortmain prohibited.**

4. And it is to be understood, that by the said sales or purchases of lands or tenements, or any parcels of them, such lands or tenements shall in no wise come into mortmain, either in part or in whole, neither by policy nor craft, contrary to the form of the statute made thereupon. And it is to wit, that this and the two preceding sections of this Act extend only to lands holden in fee simple. 18 Ed. 1, c. 2.

(See *R.S.O. c. 333.*)

#### TENANCY BY THE CURTESY.

**Tenancy by the curtesy.**

5. Where a husband has issue born alive and capable of inheriting any lands to which his wife is entitled in fee simple, or fee tail, if the husband survive his wife, whether such issue live or not, the husband shall (subject to the provisions of *The Married Women's Property Act*) be entitled to an estate for his natural life in such lands as may not have been disposed of by her by deed or will; but if he have no issue by his wife as aforesaid he shall not be entitled to any further or other estate or interest in such lands in the event of surviving his wife, except as may be devised to him by the will of his wife, or such as he may become entitled to under *The Devolution of Estates Act*. (Statute of uncertain date. Imp. Rev. St., 1870, p. 129.)

**Rev. Stat. c. 163.**

**Rev. Stat. c. 127.**

#### DOWER.

**Dower, and quarantine.**

6.—(1) A widow, on the death of her husband, may tarry in the chief house of her husband for forty days after the death of her husband, within which time her dower shall be assigned her, if it has not been assigned her before, and in the meantime she shall have her reasonable maintenance; and for her dower shall be assigned unto her the third part of all the lands of her husband whereof he was seized at any time during coverture, except such thereof as he was so seized of in trust for another. 25 Ed. 1, c. 7. (*Magna Carta*.)

(See *R.S.O. c. 322, s. 1.*)

(2) Provided always that nothing herein contained shall take away any other right of dower to which a widow is entitled under any law now in force in Ontario. *New.*

**Dower damages for deforcement.**

7. A widow wrongfully deforced of dower, or quarantine, may recover damages for such deforcement against the deforcer. 20 Hen. 3, (St. of Merton) c. 1.

**Widows may bequeath the crops on their dower lands.**

8. Widows may bequeath the crop of their ground, as well of their dowers as of other their lands and tenements, saving to the lords of the fee all such services as be due for their dowers, and other tenements. 20 Hen. 3 (St. of Merton) c. 2.

9. If a wife willingly leave her husband and go away, and continue with her adulterer, she shall be barred forever of action to demand her dower, that she ought to have of her husband's lands, unless her husband willingly, and without coercion be reconciled to her, and suffer her to dwell with him; in which case she shall be restored to her action. 13 Ed. 1, (St. of Westminster Sec.) c. 34.

Dower forfeited by elopement with adulterer.

RIGHTS OF POSTHUMOUS CHILDREN.

10. Where any estate is, by any marriage or other settlement, limited in remainder to, or to the use of, the first or other son or sons of the body of any person lawfully begotten, with any remainder over to, or to the use of, any other person or in remainder to, or to the use of, a daughter lawfully begotten, with any remainder to any other person, any son or daughter of such person lawfully begotten, or to be begotten, that shall be born after the decease of his or her father, shall, by virtue of such settlement, take such estate so limited to the first and other son or daughter, in the same manner as if born in the lifetime of his or her father, although there shall happen no estate to be limited to trustees, after the decease of the father, to preserve the contingent remainder to such after born son, or daughter, until he or she come *in esse*, or is born, to take the same; any law or usage to the contrary in anywise notwithstanding. 10 W. 3, c. 22.

Posthumous children to take estates as if born in their father's lifetime.

WARRANTIES ABOLISHED.

11. Lineal and collateral warranties at common law, with all their incidents, are abolished; but the liability of the executors, or administrators, or devisees, of any person who shall have made any covenant, is unaffected by this section. (See 4 & 5 Anne, c. 3, (or c. 16 in Ruffhead's Ed.) s. 21.) 2 Ed. 7, c. 1, s. 7.

Warranties abolished.

COVENANTS RUNNING WITH REVERSION, ETC.

12. All persons being grantees or assignees of the King, or of any other person than the King, and the heirs, executors, successors and assigns of every of them, shall have and enjoy like advantage against the lessees, their executors, administrators, and assigns, by entry for non-payment of the rent, or for doing of waste, or other forfeiture, and also shall have and enjoy all and every such like and the same advantage, benefit, and remedies, by action only, for not performing of other conditions, covenants, or agreements, contained and expressed in the indentures of their said leases, demises or grants, against all and every of the said lessees, and fermors, and grantees, their executors, administrators, and assigns, as the said lessors or grantors themselves, or their heirs or successors, might have had and enjoyed at any time or times. 32 Hen. 8, c. 34, s. 1.

Assignees of reversion to have like remedies as the lessors, against lessees.

Lessees may have action of covenant, etc., against assigns of grantors, and lessors.

13. All fermors, lessees and grantees of lands, tenements, rents, portions, or any other hereditaments, for term of years, life or lives, their executors, administrators, and assigns, shall and may have like action, advantage, and remedy, against all and every person who shall have any gift or grant of the King, or of any other person, of the reversion of the same lands, tenements and other hereditaments so let, or any parcel thereof, for any condition, covenant, or agreement, contained or expressed in the indentures of their leases, as the the same lessees, or any of them, might and should have had against their said lessors, and grantors, their heirs, or successors. 32 Hen. 8. c. 34, s. 2.

#### PRODUCTION OF CESTUIS QUE VIE, AND TENANTS FOR LIFE

*Cestuis que vie* remaining out of Province for seven years together, and no proof of their lives, to be accounted dead.

14. If any person, for whose life an estate is granted, shall remain out of Ontario, or elsewhere absent himself in this Province, for the space of seven years together, and no sufficient and evident proof be made of the life of such person in any action commenced for recovery of such estate by the lessor or reversioner, in every such case, the person upon whose life such estate depended shall be accounted as naturally dead, and in every action brought for the recovery of the said estate by the lessor or reversioner, his heirs, or assigns, judgment shall be given accordingly. 18 & 19 Car. 2, c. 11, s. 1.

If the supposed dead man proved to be alive then the title is re-vested.

15. If any person shall be evicted out of any lands or tenements by virtue of section 14, and afterwards if such person, upon whose life such estate depends, shall return to Ontario, or shall, on proof in any action to be brought for recovery of the same, be made appear to be living, or to have been living at the time of the eviction, then, and from thenceforth, the tenant or lessee who was ousted of the same, his executors, administrators or assigns, may re-enter, repossess, have, hold, and enjoy, the said lands or tenements in his former estate, for and during the life, or so long term as the said person, upon whose life the said estate depends, shall be living, and also shall, upon action to be brought by him against the lessor, reversioner, or tenant in possession, or other persons respectively, who, since the time of the said eviction, received the profits of the said lands or tenements, recover for damages the full profits of the said lands or tenements respectively, with lawful interest for, and from, the time that he was ousted of the said lands or tenements, and kept or held out of the same by the said lessor, reversioner, tenant in possession, or other person, who, after the said eviction, received the profits of the said lands or tenements, or any of them respectively, as well in the case when the said person, upon whose life such estate did depend, is or shall be dead at the time of bringing of the said action, as if the said person were then living. 18 & 19 Car. 2, c. 11, s. 4.

Action for mesne profits with interest.

16. The High Court of Justice may, on the application of any person who has any claim or demand in, or to, any remainder, reversion, or expectancy, in, or to, any estate after the death of any person within age, married woman, or any other person whomsoever, upon affidavit made by the person so claiming such estate of his title, and that he hath cause to believe that such minor, married woman, or other person, is dead, and that his, or her death is concealed by the guardian, trustee, husband, or any other person, (which application may be made once a year if the person aggrieved shall think fit), order that such guardian, trustee, husband, or other person concealing, or suspected to conceal, such person, do, at such time and place as the said Court shall direct, on personal or other due service of such order, produce and show to such person and persons (not exceeding two) as shall in such order be named by the party prosecuting such order such minor, married woman, or other person, aforesaid. And if such guardian, trustee, husband, or such other person as aforesaid, shall refuse or neglect to produce or show such infant, married woman, or such other person, on whose life any such estate doth depend, according to the directions of the said order, then the said Court is hereby authorized and required to order such guardian, trustee, husband, or other person, to produce such minor, married woman, or other person concealed, in the said Court, or otherwise before commissioners to be appointed by the said Court, at such time and place as the Court shall direct, two of which commissioners shall be nominated by the party prosecuting such order, at his costs and charges; and in case such guardian, trustee, husband, or other person, shall refuse or neglect to produce such infant, married woman, or other person so concealed, in the said Court, or before such commissioners, whereof return shall be made by such commissioners, and filed in the Central office, in either, or any, of the said cases, the said minor, married woman, or such other person, so concealed, shall be taken to be dead, and it shall be lawful for any person claiming any right, title, or interest, in remainder or reversion, or otherwise, after the death of such infant, married woman, or such other person, so concealed as aforesaid, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person so concealed, were actually dead. 6 Anne, c. 72 (or c. 18 in Ruffhead's Ed.), s. 1.

Reversioners, etc., expectant upon determination of life estate, upon affidavit of belief of death of infant or other tenant for life as herein mentioned, and such death is concealed by guardian, etc. may yearly move for and obtain an order of H.C.J. for the production of such tenant for life;

and upon refusal, etc. to produce such tenant for life, he to be taken to be dead.

17. And if it shall appear to the said Court by affidavit that such minor, married woman, or other person, is, or lately was, at some certain place out of Ontario in the said affidavit to be mentioned, it shall and may be lawful for the party prosecuting such order as aforesaid, at his costs and charges, to send over one or both the said persons appointed by the said order to view such minor, married woman, or other person, and in case such guardian, trustee, husband, or other person, concealing

If such infant, etc. tenant for life, appear to be in some place out of Ontario, party prosecuting such order may send over to view such infant, and if

guardian, etc., will not produce such tenant for life, then he or she to be taken as dead.

cealing, or suspected to conceal, such person as aforesaid, shall refuse or neglect to produce, or procure to be produced, to such person or persons a personal view of such infant, married woman, or other person, then such person or persons are hereby required to make a true return of such refusal or neglect to the said Court, which shall be filed in the Central office, and thereupon such minor, married woman, or other person, shall be taken to be dead, and it shall be lawful for any person claiming any right, title, or interest, in remainder, reversion, or otherwise, after the death of such infant, married woman, or other person, to enter upon such lands, tenements and hereditaments, as if such infant, married woman, or other person, were actually dead. 6 Anne, c. 72 (or c. 18 in Ruffhead's Ed.), s. 2.

If it appear afterwards in any action that such tenant for life was alive at the time of the order made, then he or she may re-enter, and have action for rent, etc.

18. Provided always, if it shall afterwards appear upon proof in any action to be brought that such infant, married woman, or other person was alive at the time of such order made, then it shall be lawful for such infant, married woman, guardian, or trustee, or other person, having any estate or interest determinable upon such life, to re-enter upon the said lands, tenements, or hereditaments, and to maintain an action against those who, since the said order, received the profits of such lands, tenements, or hereditaments, or their executors, or administrators, and therein recover full damages for the profits of the same received from the time that such infant, married woman, or other person, having any estate or interest determinable upon such life, was ousted of the possession of such lands, tenements, or hereditaments. 6 Anne, c. 72 (or c. 18 in Ruffhead's Ed.), s. 3.

Proviso for guardian, etc., who shall make it appear that due endeavour has been used to procure the appearance of such infant and tenant for life.

19. Provided always, if any such guardian, trustee, husband, or other person, holding or having any estate or interest determinable upon the life of any other person, shall by affidavit or otherwise, to the satisfaction of the said Court, make appear that he has used his utmost endeavours to procure such infant, married woman, or other person, on whose life such estate or interest doth depend, to appear in the said Court, or elsewhere according to the order of the said Court in that behalf made, and that he cannot procure or compel such infant, married woman, or other person, so to appear, and that such infant, married woman, or other person, is or was living at the time of such return made and filed as aforesaid, then it shall be lawful for such person to continue in the possession of such estate, and receive the rents and profits thereof, for and during the infancy of such infant, and the life of such married woman, or other person, on whose life such estate or interest doth depend, as fully as he might have done if this, and the three preceding sections of this Act had not been made. 6 Anne, c. 72, (or c. 18 in Ruffhead's Ed.) s. 4.

**20.** Every person who as guardian or trustee for any infant, and every husband seized in right of his wife only, and every other person, having any estate determinable upon any life who, after the determination of such particular estate or interest, without the express consent of him who is next and immediately entitled upon and after the determination of such particular estate or interest, shall hold over and continue in possession of any lands, tenements, or hereditaments, shall be deemed a trespasser, and every person, who is, or shall be, entitled to any such lands, tenements, and hereditaments, upon and after the determination of such particular estate or interest, may recover in damages against every such person so holding over as aforesaid, the full value of the profits received during such wrongful possession as aforesaid. 6 Anne, c. 72, (or c. 18 in Ruffhead's Ed.) s. 5.

Guardians, trustees, etc. holding over without consent of remainderman, etc. deemed trespassers.

Damages.

#### WASTE.

**21.** A tenant by the curtesy, a dowress, a tenant for life, or for years, and the guardian of the estate of an infant, shall be impeachable for waste, and liable in damages to the person injured. 6 Edw. 1, (St. of Gloucester) c. 5.

Waste by tenants by curtesy, dowress, etc.

(For other remedies see *The Judicature Act, s. 58 (9).*)

**22.** Tenants in common, and joint tenants, shall be liable to their co-tenants for waste, or, in the event of a partition, the part wasted may be assigned to the tenant committing such waste, at the value thereof to be estimated as if no such waste had been committed. 13 Edw. I, (St. of Westminster, Sec.) c. 22.

Waste between joint tenants and tenants in common.

**23.** Lessees making or suffering waste on the demised premises without license of the lessors, shall be liable for the full damage so occasioned. 52 Hen. 3, (St. of Marlbridge) c. 23

Waste by lessees.

#### DEFECTS IN LEASES MADE UNDER POWERS OF LEASING.

**24.** Where, in the intended exercise of any power of leasing, whether derived under a statute, or under any instrument lawfully creating such power, a lease has been, or shall hereafter be granted, which is, by reason of the non-observance or omission of some condition or restriction, or by reason of any other deviation from the terms of such power, invalid as against the person entitled, after the determination of the interest of the person granting such lease, to the reversion, or against other the person who, subject to any lease lawfully granted under such power, would have been entitled to the hereditaments comprised in such lease, such lease, in case the same have been made *bonâ fide*, and the lessee named therein, his heirs, executors, administrators, or assigns, (as the case may require), have entered thereunder, shall be considered

Leases invalid owing to deviation from terms of the power to be deemed contracts in equity for such leases as might have been granted under the power.

in equity as a contract for a grant, at the request of the lessee, his heirs, executors, administrators, or assigns, (as the case may require) of a valid lease under such power, to the like purport and effect, as such invalid lease as aforesaid, save so far as any variation may be necessary in order to comply with the terms of such power; and all persons who would have been bound by a lease lawfully granted under such power shall be bound in equity by such contract: Provided always that no lessee under any such invalid lease as aforesaid, his heirs, executors, administrators, or assigns, shall be entitled, by virtue of any such equitable contract as aforesaid, to obtain any variation of such lease, where the persons who would have been bound by such contract are willing to confirm such lease without variation. Imp. Act, 12 & 13 Vict. c. 26, s. 2.

Proviso where the grantor or reversioner is willing to confirm.

Where there is a note in writing showing intent to confirm, acceptance of rent to be deemed a confirmation.

**25.** Where, upon or before the acceptance of rent, under any such invalid lease, any receipt, memorandum or note in writing, confirming such lease, is signed by the person accepting such rent, or some other person by him thereunto lawfully authorized, such acceptance shall, as against the person so accepting such rent, be deemed a confirmation of such lease. Imp. Act, 13 Vict. c. 17, s. 2.

Where reversioner is able and willing to confirm, lessee to accept confirmation.

**26.** Where, during the continuance of the possession taken under any such invalid lease, the person for the time being entitled (subject to such possession as aforesaid) to the hereditaments comprised in such lease, or to the possession or the receipt of the rents and profits thereof, is able to confirm such lease without variation, the lessee, his heirs, executors, or administrators (as the case may require), or any person who would have been bound by the lease if the same had been valid, shall, upon the request of the person so able to confirm the same, be bound to accept a confirmation accordingly; and such confirmation may be by memorandum or note in writing, signed by the persons confirming, and accepting, respectively, or by some other persons by them respectively thereunto lawfully authorized; and, after confirmation, and acceptance of confirmation, such lease shall be valid, and shall be deemed to have had, from the granting thereof the same effect, as if the same had been originally valid. Imp. Act, 13 Vict. c. 17, s. 3.

Leases invalid at the granting thereof, may become valid if the grantor continue in the ownership until the time when he might lawfully grant such a lease.

**27.** Where a lease granted in the intended exercise of any power of leasing is invalid by reason that, at the time of the granting thereof, the person granting the same could not lawfully grant such lease, but the estate of such person in the hereditaments comprised in such lease shall have continued after the time when such, or the like lease, might have been granted by him in the lawful exercise of such power, then, and in every such case, such lease shall take effect, and be as valid, as if the same had been granted at such last mentioned time, and



and all the provisions herein contained shall apply to every such lease. Imp. Act, 12 & 13 Vict. c. 26, s. 4.

**28.** Where a valid power of leasing is vested in, or may be exercised by, a person granting a lease, and such lease (by reason of the determination of the estate or interest of such person, or otherwise) cannot have effect and continuance according to the terms thereof, independently of such power, such lease shall, for the purposes of the four preceding sections of this Act, be deemed to be granted in the intended exercise of such power, although such power be not referred to in such lease. Imp. Act, 12 & 13 Vict. c. 26, s. 5.

What shall be deemed an intended exercise of a power.

**29.** Nothing herein contained shall extend to, or be construed to prejudice, or take away, any right of action, or other right or remedy, to which, but for the five preceding sections of this Act, the lessee named in any such lease as aforesaid, his heirs, executors, administrators, or assigns, would or might have been entitled, under or by virtue of any covenant for title or quiet enjoyment contained in such lease on the part of the person granting the same, or to prejudice, or take away, any right of re-entry, or other right or remedy to which, but for the said five preceding sections the person granting such lease, his heirs, executors, administrators, or assigns, or other person, for the time being entitled to the reversion expectant on the determination of such lease, would or might have been entitled, for, or by reason of, any breach of the covenants, conditions, or provisoes contained in such lease, and on the part of the lessee, his heirs, executors, administrators, or assigns, to be observed, and performed. Imp. Act, 12 & 13 Vict. c. 26, s. 6.

Saving the rights of the lessees under covenants for title and for quiet enjoyment, and the lessor's right of re-entry for breach of covenant, etc.

**30** The six preceding sections shall not extend to any lease by an ecclesiastical corporation, or spiritual person, or to any lease of the possessions of any college, hospital, or charitable foundation, or to any lease, where, before the 10th day of June, 1857, the hereditaments comprised in such lease have been surrendered or relinquished, or recovered adversely by reason of the invalidity thereof, or there has been any judgment or decree in any action or suit concerning the validity of such lease. Imp. Act, 12 & 13 Vict. c. 26, s. 7.

Act not to extend to certain leases.

#### ILLUSORY APPOINTMENTS.

**31.** No appointment which shall be made in exercise of any power or authority to appoint any property, real or personal, amongst several objects, shall be invalid, or impeached, on the ground that an unsubstantial, illusory, or nominal, share only, shall be thereby appointed to, or left unappointed to devolve upon, any one or more of the objects of such power; but every such appointment shall be valid and effectual, notwithstanding that anyone, or more, of the objects shall not there-

No appointment in exercise of a power shall be impeached in equity as illusory by reason of giving only a nominal share to any object of the power.

under, or in default of such appointment, take more than an **unsubstantial, illusory**, or nominal, share of the property subjected to such power. Imp. Act 11 Geo. 4, & 1 Wm. 4, c. 46, s. 1.

Not to affect any deed which declares the amount of the shares to be appointed.

**32.** Nothing in the preceding section shall prejudice or affect any provision, in any deed, will, or other instrument, creating any such power as aforesaid, which shall declare the amount of the share or shares from which no object of the power shall be excluded. Imp. Act 11 Geo. 4, & 1 W. 4 c. 46, s. 2.

Nor to give any other force to any appointment than the same would have had if a substantial share had been appointed or left to devolve as unappointed.

**33.** Nothing in sections 31, and 32, of this Act, shall be construed, deemed, or taken, to give any other validity, force, or effect, to any appointment, than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to, or left unappointed to devolve upon, any object of such power. Imp. Act 11 Geo. 4, & 1 W. 4, c. 46, s. 3.

(See *R.S.O. c. 51, s. 57 (4)*).

#### LEASES BY TENANTS IN TAIL, AND OTHERS.

Leases made by tenants in tail declared valid against heirs.

**34.** All leases made of any lands, tenements, or other hereditaments, by writing under seal, for term of years, or for term of life, by any person being of full age of twenty-one years, having any estate of inheritance in fee tail, shall be good and effectual in the law against the lessor and his heirs, and all persons entitled in remainder, or reversion, according to such estate as is comprised and specified in every such lease, in like manner and form as the same should have been if the lessor, at the time of the making of such lease, had been lawfully seized of the same lands, tenements, and hereditaments, comprised in such lease, of a good, perfect, and pure, estate of fee simple thereof to his own only use. 32 Hen. 8, c. 28, s. 1.

(But see *R.S.O. c. 122, s. 30*.)

Not to extend to leases in reversion, etc. or for more than 21 years, etc.

**35.—(1)** Provided always that this and the preceding section, shall not extend to any leases to be made of any lands, tenements, or hereditaments, being in the hands of any fermor by virtue of any old lease, unless the same old lease be expired, surrendered, or ended, within one year next after the making of the said new lease; nor shall extend to any grant to be made of any reversion of any lands, tenements or hereditaments, nor to any lease of any lands, tenements, or hereditaments, which have not most commonly been let to ferm, or occupied by the fermors thereof, for the space of twenty years next before such lease thereof made; nor to any lease

to be made without impeachment of waste; nor to any lease to be made above the number of twenty-one years or three lives at the most from the day of making thereof;

(2) Provided also that upon every such lease there shall be reserved yearly during the same lease due and payable to the lessor his heirs, and to whom the same lands should have come after the death of the lessor, if no such lease had been thereof made, and to whom the reversion thereof shall appertain, according to their estates and interests, so much yearly ferm or rent or more as hath been most accustomed yielded or paid for the lands, tenements, and hereditaments, so to be let, within twenty years next before such lease thereof made;

Reservation of accustomed rent on such leases, payable to the reversioners.

(3) Provided also that every such person to whom the reversion of such lands, tenements, or hereditaments, so to be let, shall appertain as aforesaid, after the deaths of such lessors or their heirs, shall and may have such like remedy and advantage to all intents and purposes against the lessees thereof, their executors, administrators or assigns, as the same lessor should or might have had against the same lessees; so that, if the lessor were seized of any especial estate tail of the same hereditaments at the time of such lease, the issue or heir of that special estate shall have the reversion, rents, and services, reserved upon such lease, after the death of the said lessor, as the lessor himself might, or ought to have had, if he had lived. 32 Hen. 8, c. 28, s. 2.

Reversioner to have like remedies as lessor.

**36.** Section 1 of the Revised Statutes of Ontario, chapter 119, shall extend to this Act as far as applicable. *New.*

Interpretation, clause of, R.S.O., c. 119, to apply.

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## CHAPTER 331.

### An Act concerning Uses.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title. 1. This Act may be cited as *The Statute of Uses. New*

Persons entitled to the use of lands, shall stand and be seized and be deemed in lawful seizin and possession of the lands.

2. Where any person stands or is seized of and in lands, tenements, rents, services, reversions, remainders, or other hereditaments, to the use, confidence or trust, of any other person, or of any body politic, by reason of any bargain, sale, feoffment, covenant, contract, agreement, will, or otherwise, by any means whatsoever it be, in every such case such person and body politic that shall have any such use, confidence or trust, in fee simple, fee tail, for term of life, or for years, or otherwise, or any use, confidence or trust, in remainder or reversion, shall from henceforth stand and be seized, deemed and adjudged in lawful seizin, estate and possession of and in the same lands, tenements, rents, services, reversions, remainders, and hereditaments, with their appurtenances, to all intents, constructions and purposes in the law, of and in such like estates as they had, or shall have, in use, trust or confidence, of or in the same. And the estate, right, title, and possession, that was in such person that was, or shall be hereafter seized, of any lands, tenements, or hereditaments, to the use, confidence or trust, of any such person, or of any body politic, shall be from henceforth deemed and adjudged to be in him that hath such use, confidence or trust, after such quality, manner, form and condition, as he had before in or to the use, confidence or trust, that was in him. 27 Hen. 8, c. 10, s. 1.

So where divers are seized to the use of any of them :

3. Where divers and many persons be, or hereafter shall happen to be, jointly seized, of and in any lands, tenements, rents, reversions, remainders, or other hereditaments, to the use, confidence or trust, of any of them that be so jointly seized, then, in every such case, that person which shall have any such use, confidence or trust, in any such lands, tenements, rents, reversions, remainders, or hereditaments, shall, from henceforth, have, and be deemed to have, only to him, or them, that shall have such use, confidence or trust, such estate, possession, and seizin, of and in the same lands, tenements, rents, reversions, remainders, or other hereditaments, in like nature, manner and form, condition and course, as he or they had before in the use, confidence or trust, of the same lands, tenements,

tenements, or hereditaments; saving to all and singular those persons, and to their heirs, who are, or hereafter shall be, seized to any use, all such former right, title, entry, interest, possession, rents, customs, services, and action, as they, or any of them, might have had, to his or their own proper use, in or to any lands, tenements, rents, or hereditaments, whereof they be, or hereafter shall be, seized to any other use, as if this Act had never been made; anything contained in this Act to the contrary notwithstanding. 27 Hen. 8, c. 10, s. 2.

Saving for rights of persons seized to any use.

4. And where also divers persons stand and be seized of and in any lands, tenements, or hereditaments, in fee simple or otherwise, to the use or intent that some other person shall have and receive yearly to him and his heirs an annual rent of forty dollars more or less out of the same lands and tenements, and some other person another annual rent to him and his assigns, for the term of life, or years, or for some other special time, according to such intent and use as hath been heretofore declared, limited, and made, thereof; in every such case the same person, his heirs and assigns, that hath such use and interest to have and receive any such annual rents out of any lands, tenements, or hereditaments, shall be deemed to be in possession and seizin of the same rent, of and in such like estate as they had in the title, interest or use, of the said rent or profit, and as if a sufficient grant, or other lawful conveyance, had been made and executed to them by such as were or shall be seized to the use or intent of any such rent, to be had, made or paid, according to the very trust and intent thereof. And every such person as hath, or hereafter shall have, any title, use and interest, in or to, any such rent or profit, may lawfully distrain for non-payment of the said rent, and in his own name make avowries, or by his bailiffs or servants make cognizances and justifications, and have all other suits, entries and remedies for such rents, as if the same rents had been actually and really granted to him with sufficient clauses of distress, re-entry, or otherwise, according to such conditions, pains or other things, limited and appointed upon the trust and intent for payment, or surety of such rents. 27 Hen. 8, c. 10, s. 3.

In case of uses for payment of any rents, the parties entitled to the rents shall be deemed in possession and seizin thereof.

5. And where lands, tenements, and hereditaments, are conveyed unto a husband and wife, and to the heirs of the husband, or to the husband and to the wife and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to the wife for term of their lives, or for term of life of the said wife, or where any such estate or purchase of any lands, tenements, or hereditaments, hath been, or hereafter shall be, made to any husband and to his wife in manner and form above expressed, or to any other person or persons and to their heirs and assigns to the use and behoof of the said husband and wife, or to the use of the

Women having jointures shall not have dower.

wife,

wife, as is before rehearsed, for the jointure of the wife, then, and in every such case, every woman married, having such jointure made, or hereafter to be made, shall not claim or have title to have any dower of the residue of the lands, tenements, or hereditaments, that at any time were her said husband's by whom she hath any such jointure, nor shall demand nor claim her dower of and against them that have the lands and inheritances of her said husband, but if she have no such jointure then she shall be admitted and enabled to pursue, have, and demand, her dower by action of dower after the due course and order of the laws of this Province; this Act or any law or provision made to the contrary thereof notwithstanding. 27 Hen. 8, c. 10, s. 4.

Proviso for dower, where the wife is evicted of her dower.

6. Provided always that if any such woman be lawfully expelled or evicted from her said jointure, or from any part thereof, without any fraud or covin, by lawful entry, action, or by discontinuance of her husband, then every such woman shall be endowed of as much of the residue of her husband's tenements or hereditaments whereof she was before dowable, as the same lands and tenements from which she was so evicted and expelled shall amount or extend unto. 27 Hen. 8, c. 10, s. 5.

Jointure made after marriage, except by statute, may be refused by the wife; who shall then have her dower.

7. Provided also that if any wife shall have any lands, tenements, or hereditaments, unto her given or assured, after marriage, for term of her life or otherwise in jointure, except the same assurance be to her made by statute, and the said wife, after that, fortune to outlive her husband in whose time the said jointure was made or assured unto her, then the said wife so overliving shall and may at her liberty, after the death of her said husband, refuse to have and take the lands, and tenements, so to her given, appointed, or assured, during the coverture, for term of her life or otherwise in jointure, except the same assurance be to her made by statute as aforesaid, and thereupon have, ask, demand and take her dower, by action of dower or otherwise, according to law, of and in all such lands, tenements, and hereditaments, as her husband was and stood seized of any estate of inheritance, at any time during the coverture; anything contained in this Act to the contrary in any wise notwithstanding. 27 Hen. 8, c. 10, s. 7.

This Act shall not extinguish recognisances, etc.

8. Provided also that this present Act, or anything therein contained, shall not extend, nor at any time hereafter be interpreted, expounded, or taken, to extinct, release, discharge, or suspend, any statute, recognisance, or other bond, by the execution of any estate of, or in, any lands, tenements, or hereditaments, by the authority of this Act, to any person; anything contained in this Act to the contrary thereof notwithstanding. 27 Hen. 8, c. 10, s. 8.

CHAPTER

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CHAPTER 332.

An Act to restrain the Accumulation of the Profits or Produce of Real or Personal Estate.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as *The Act in Restraint of Accumulations.* *New.*

2.—(1) No person shall, by any deed, surrender, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property so that the rents, issues, profits or produce thereof shall be wholly or partially accumulated for any longer than one of the following terms, viz. :

- (a) For the life of the grantor.
- (b) For twenty-one years from the death of the grantor or testator.
- (c) For the period of minority of any person living, or *en ventre sa mere*, at the death of the grantor, or testator.
- (d) For the period of minority of any person who, under the instrument directing the accumulation, would for the time being, if of full age, be entitled to the income, or rents, and profits, directed to be accumulated.

No person, by deed or will, etc., shall settle or dispose of any real or personal property in such manner that the rents or produce shall be accumulated for a longer term than herein mentioned, and any other direction shall be void, and the rents, etc. shall go to the persons who would otherwise be entitled thereto.

Imp. Act 55-56 Vict., c. 58.

(2) Provided always that no accumulation for the purchase of land shall be directed for any longer period than that mentioned in the preceding sub-section.

(3) In every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits and produce, of such property so directed to be accumulated, shall, so long as the same shall be directed to be accumulated contrary to the provisions of this Act, go to and be received by such person as would have been entitled thereto, if such accumulation had not been directed. 39 & 40 Geo. 3, c. 98, s. 1.

3. Nothing in this Act contained shall extend to any provision for payment of debts of any grantor, settlor, or devisor, or other person, or to any provision for raising portions for any child of any grantor, settlor, or devisor, or for any child of any person

Nothing herein to extend to any provision for payment of person

7 s.—III.

debts, or for raising portions for children, or touching the produce of timber.

person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements, but that all such provisions and directions shall and may be made and given as if this Act had not passed. 39 & 40 Geo. 3, c. 98, s. 2.

When restrictions shall take effect with respect to wills made before the passing of this Act

4. The restrictions in this Act contained shall take effect and be in force with respect to wills and testaments made and executed before the 4th day of March, 1837, in such cases only where the deviser or testator was living and of sound and disposing mind after the expiration of twelve calendar months from the said 4th day of March, 1837. 39 & 40 Geo. 3, c. 98, s. 4.



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## CHAPTER 333.

### An Act respecting Mortmain and the disposition of Land for Charitable Uses.

**HIS MAJESTY**, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as *The Mortmain, and Charitable Uses Act, 1902*, and shall be read as part of *The Mortmain and Charitable Uses Act*. 2 Ed. 7, c. 2, s. 1.

Short title.  
Rev. Stat.  
c. 112.

2. In this Act, unless the context otherwise requires,

Definitions.

(1). "Assurance," includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will or other instrument; and "Assure" and "Assuror" have meanings corresponding with assurance.

" Assurance."

(2). "Will" includes codicil.

" Will."

(3). "Land" includes tenements, and hereditaments, corporeal and incorporeal of whatever tenure, but not money secured on land, or other personal estate arising from, or connected with, land.

" Land."

(4). "Full and valuable consideration" includes such a consideration either actually paid upon, or before, the making of the assurance, or reserved or made payable to the vendor or any other person by way of rent, rent charge, or other annual payment, in perpetuity, or for any term of years, or other period, with or without a right of re-entry for non-payment thereof, or partly paid, and partly reserved, as aforesaid. 2 Ed. 7, c. 2, s. 2.

" Full and valuable consideration."  
Imp. Acts 51-52 Vict. c. 42, s. 10; and 54-55 Vict. c. 73, s. 8.

### PART I.

#### MORTMAIN.

3. Land shall not be assured to, or for the benefit of, or acquired by, or on behalf of, any corporation in mortmain, otherwise than under the authority of a licence from His Majesty the King, or of a statute for the time being in force, and if any land is so assured, otherwise than as aforesaid, the land shall be forfeited to His Majesty from the date of the assurance

Forfeiture on unlawful assurance or acquisition in mortmain.  
Imp. Act, 51-52 Vict. c. 42 s. 1.

assurance, and His Majesty may enter on and hold the land accordingly. 2 Ed. 7, c. 2, s. 3.

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Power to Lieutenant-Governor to grant licences in Mortmain.

Imp. Act 51-52 Vict. c. 42, s. 2.

4. It shall be lawful for the Lieutenant Governor in Council, if and when, and in such form as, he thinks fit, to grant to any person or corporation a licence to assure in mortmain land in Ontario in perpetuity or otherwise, and to grant to any corporation a licence to acquire land in Ontario in mortmain, and to hold such land in perpetuity or otherwise. 2 Ed. 7, c. 2, s. 4.

Saving for rents and services.

Imp. Act 51-52 Vict. c. 42, s. 3.

5. No entry or holding by, or forfeiture to, His Majesty under this part of this Act, shall merge or extinguish, or otherwise affect, any rent or service which may be due in respect of any land to His Majesty, or any other lord thereof. 2 Ed. 7, c. 2, s. 5.

## PART II.

### CHARITABLE USES.

Charities, definition of.

Imp. Act 51-52 Vict. c. 42, s. 13 (3).

6. The following shall be deemed to be valid charitable uses within the meaning of this Act, viz.: the relief of aged, impotent, and poor people; the maintenance of sick and maimed soldiers and mariners; the maintenance of schools of learning, free schools, and scholars in universities; the repair of bridges, ports, havens, causeways, churches, sea banks, and highways; the education and preferment of orphans; the relief, stock, or maintenance of houses of correction; provision for the marriages of poor maids; the support, aid and help of young tradesmen, handicraftsmen, and persons in poor circumstances; the relief, or redemption, of prisoners or captives; and the aid or ease of any poor inhabitants concerning payment of taxes; and any other purposes similar to those hereinbefore mentioned. (*See 43 Eliz. c. 4, s. 1, part.*) 2 Ed. 7, c. 2, s. 6.

Conditions under which assurances may be made to charitable uses.

7.—(1). Subject to the provisions of the Revised Statutes, chapter 112, and to the savings and exceptions contained in this Act, or any other Act in force for the time being, every assurance of land to, or for the benefit of, any charitable uses, and every assurance of personal estate to be laid out in the purchase of land, to, or for the benefit of, any charitable uses, shall be made in accordance with the requirements of this Act, and unless so made shall be void.

(2). The assurance must be made to take effect in possession for the charitable uses to or for the benefit of which it is made, immediately from the making thereof.

(3). The assurance must, except as provided by this section, be without any power of revocation, reservation, condition, or provision, for the benefit of the assurator, or of any person claiming under him.

(4.)

(4) Provided that the assurance, or any instrument forming part of the same transaction, may contain all or any of the following provisions, so, however, that they reserve the same benefits to persons claiming under the assurator, as to the assurator himself; namely,

- (i) The grant, or reservation, of a peppercorn, or other nominal rent.
- (ii) The grant, or reservation, of mines, or minerals.
- (iii) The grant, or reservation, of any easement.
- (iv) Covenants or provisions as to the erection, repair, position, or description, of buildings, the formation or repair of streets or roads, or as to drainage, or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land.
- (v) A right of entry on non-payment of any such rent, or on breach of any such covenant, or provision.
- (vi) Any stipulations of the like nature for the benefit of the assurator, or of any person claiming under him.

(5) If the assurance is made in good faith on a sale for full and valuable consideration, that consideration may consist wholly or partly of a rent, rent charge, or other annual payment, reserved or made payable to the vendor, or any other person, with, or without, a right of re-entry for nonpayment thereof. Consideration, what it may consist of.

(6) If the assurance is of land, or of personal estate, not being stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made at least six months before the death of the assurator, including in those six months the days of the making of the assurance and of the death. Where necessary to be made 6 months before death of grantor.

(7) If the assurance is of stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made by transfer thereof in the public books kept for the transfer of stock at least six months before the death of the assurator, including in those six months the days of the transfer and of the death. Transfer of stock, when to be made. Imp. Act, 51-52 V. c. 42, s. 4. 2 Ed. 7, c. 2, s. 7.

### PART III.

#### EXEMPTIONS.

8.—(1) Provided always, that, notwithstanding anything in Parts I. and II. of this Act contained to the contrary, lands, or personal estate to be laid out in the purchase of lands, may be assured to the extent, and for all or any of the purposes following, viz. :— Assurances for a public park, school, or museum.

(a)

(a) For a park.

(b) For a public museum.

(c) For a school, or school house.

Assurance for value not subject to any restriction.

(i) If such assurance be by deed, and be made in good faith for full and valuable consideration, the same may be made free from any restriction imposed by this Act

Voluntary assurances.

(ii) If such assurance be not made for full and valuable consideration it must be made at least six months before the death of the assurator, but in the case of a will not made six months before the decease of the assurator, it shall suffice if such will be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than six months before the death of the assurator.

Quantity of land which may be conveyed by deed,

(iii) The quantity of land which may be assured, or for the purchase of which personal estate may be assured, by deed for full and valuable consideration for any of the purposes aforesaid is unlimited.

by will,

(iv) The quantity of land which may be assured by will, or for the purchase of which personal estate may be assured by will, is:—

for parks, 20 acres.  
museums, 2 acres,  
schools, 1 acre.

(a) For any one public park, not more than twenty acres  
(b) For any one public museum, not more than two acres.  
(c) For any one school, or school house, not more than one acre.

Definitions,

(2) In this section

“ park.”

(i) “ Public park ” includes any park, garden, or other land, dedicated, or to be dedicated, to the recreation of the public;

“ School.”

(ii) “ School ” means a school, or department of a school, at which education is given, in literature, art, science or mathematics ;

“ School-house.”

(iii) “ School house ” includes the teacher's dwelling house, the playground (if any), and the offices and premises belonging to, or required for, a school ;

“ Public museum.”

(iv) “ Public museum ” includes buildings used, or to be used, for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical, scientific or philosophical, inventions, instruments, models, or designs, and dedicated, or to be dedicated, to the recreation of the public, together with any libraries, reading rooms, laboratories, and other offices and premises, used or to be used in connection therewith. 2 Ed. 7, c. 2, s. 8.

Imp. Act,  
51-52 V. c. 42.  
s. 6.

Assurances for certain universities, colleges and societies.

9. Section 7, of this Act shall not apply to the following assurances :

(1)

(1) An assurance of land, or personal estate to be laid out in the purchase of land, to or in trust for, any incorporated university, college or school in Ontario, or for the support and maintenance of the students thereat.

(2) An assurance, otherwise than by will, to trustees on behalf of any society, or body of persons (incorporated, or unincorporated) associated together for religious purposes, or for the promotion of education, art, literature, science, or other like purposes, of land not exceeding two acres, for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected, so that the assurance be made in good faith for full and valuable consideration. 2 Ed. 7, c. 2, s. 9.

Imp. Act,  
51-52 V. c. 42,  
s. 7.

#### PART IV.

##### SUPPLEMENTAL.

10. Any assurance of land, which is by this Act required to be made by deed, may be made by a registered disposition under the provisions of *The Land Titles Act*, or of any Act amending the same. 2 Ed. 7, c. 2, s. 10.

Adaptation of  
law to system  
of land registra-  
tion under  
Rev. St.,  
c. 138.

11. Nothing in this Act shall affect the operation or validity of any charter or licence in force at the passing of this Act enabling land to be assured or held in mortmain. 2 Ed. 7, c. 2, s. 11.

Saving for  
existing  
licences, etc.

##### SUMMARY REMEDY FOR BREACH OF CHARITABLE TRUST.

12. In every case of a breach of any trust, or supposed breach of any trust, created for charitable purposes, or whenever the direction or order of a court shall be deemed necessary for the administration of any trust for charitable purposes, it shall be lawful for any two or more persons to present a petition to the High Court of Justice stating such complaint, and praying such relief as the nature of the case may require and it shall be lawful for the said Court to hear such petition in a summary way, and upon such affidavits, or such other evidence as shall be produced upon such hearing, to determine the same, and to make such order therein, and with respect to the costs of such application, as shall seem just; and any order so made shall be subject to appeal as if made in an action. (See *Imp. Act 52 Geo. 3, c. 101, s. 1.*) 2 Ed. 7, c. 2, s. 12.

In cases of  
breach of a  
charitable  
trust, etc., a  
petition may  
be presented  
to the High  
Court of Jus-  
tice, and the  
same shall be  
heard in a  
summary way,  
and order  
made therein.

13. Provided always that every petition so to be preferred as aforesaid shall be signed by the persons preferring the same in the presence of, and shall be attested by, the solicitor or attorney concerned for such petitioners, and every such petition shall be submitted to, and be allowed by, His Majesty's Attorney-General for the Province, and such allowance shall be certified by him before any such petition shall be presented. (See *Imp. Act 52 Geo. 3, c. 101, s. 2.*) 2 Ed. 7, c. 2, s. 13.

Petitions to  
be signed by  
petitioners,  
and certified  
by Attorney-  
General, etc.

Repeal.

14. The Acts specified in the schedule to this Act are hereby repealed, to the extent specified in the third column of that schedule. 2 Ed. 7, c. 2, s. 14.

## SCHEDULE.

## ACTS REPEALED.

NOTE. This schedule is to be read as referring to the revised edition of the Imperial Statutes prepared under the direction of the Imperial Statute Law Committee.

The chapters of the statutes (before the division into separate Acts) are described by the marginal abstracts given in that edition.

Session and Chapter.	Title.	Extent of Repeal.
7 Edw. 1 . . . . .	Statut' de viris religiosis. . . .	The whole Act.
13 Edw. 1 c. 32. . . .	Remedy in case of mortmain under judgments by collusion	The whole chapter.
19 Edw. 3 St. 3 c. 3.	Prosecutions against religious persons for purchasing lands in mortmain. . . . .	The whole chapter.
15 Ric. 2 c. 5. . . . .	St. 7 Edw. 1 de Religiosis, converting land to a churchyard declared to be within that statute. Mortmain, where any is seized of lands to the use of spiritual persons. Mortmain to purchase lands in gilds, fraternities, offices, commodities, or to their use. . . . .	The whole chapter.
23 Hen. 8 c. 10. . . .	An Act for feoffments and assurance of lands and tenements made to the use of any parish church, chapel or such like . . . . .	The whole Act.
43 Eliz. c. 4. . . . .	An Act to redress the misemployment of lands, goods and stocks of money heretofore given to charitable uses.	The whole Act.
7-8 W. 3 c. 37. . . .	An Act for the encouragement of charitable gifts and dispositions . . . . .	The whole Act.
9 Geo. 2 c. 36. . . .	An Act to restrain the disposition of lands whereby the same became unalienable . .	The whole Act.
52 Geo. 3 c. 101 . . .	An Act to provide a summary remedy in cases of abuses of trusts created for charitable purposes . . . . .	The whole Act.
9 Geo. 4 c. 85 . . . .	An Act for remedying a defect in the titles of lands purchased for charitable purposes . . . . .	The whole Act except as far as it affects ecclesiastical rights of property.

CHAPTER

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## CHAPTER 334.

### An Act against fraudulent Deeds, Gifts, Devises, Alienations, &c.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. For the avoiding and abolishing of feigned, covinous, and fraudulent, feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, as well of lands and tenements as of goods and chattels, more commonly used and practised in these days, than hath been seen or heard of heretofore, which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, have been, and are, devised and contrived of malice, fraud, covin, collusion, or guile, to the end purpose and intent to delay, hinder, or defraud, creditors and others, of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining, and chevysaunce, between man and man, without the which no commonwealth or civil society can be maintained or continued:—All and every feoffment, gift, grant, alienation, bargain, and conveyance, of lands, tenements, hereditaments, goods and chattels, or any of them, or of any lease, rent, common, or other profits, or charge, out of the same lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment, and execution, at any time had or made, or at any time hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken, only as against that person and his assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures, by such guileful, covinous, or fraudulent, devices and practices as is aforesaid, are shall, or might be, in any wise disturbed, hindered, delayed, or defrauded, to be clearly and utterly void, frustrate, and of none effect; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing, to the contrary notwithstanding. 13 Eliz. c. 5, s. 1.

Evils of feigned conveyances to defraud creditors ;

such conveyances declared void as against the creditors.

2. All and every the parties to such feigned, covinous, or fraudulent, feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, and other things before expressed, or being privy to, and knowing of, the same or any of them, which at any time shall wittingly and willingly put in

All parties to such fraudulent conveyances, putting the same in effect, shall forfeit one

year's value of land, and the whole value of goods so conveyed ;

half to the Crown, and half to the party grieved.

in use, avow, maintain, justify, or defend, the same or any of them, as true, simple, and done, had, or made, *bond fide* upon good consideration, or shall alien or assign, any the lands, tenements, goods, leases, or other things before mentioned, to him or them conveyed as is aforesaid, or any part thereof, shall incur the penalty and forfeiture of one year's value of the said lands, tenements, and hereditaments, leases, rents, commons, or other profits of, or out of, the same, and the whole value of the said goods and chattels, and also so much money as shall be contained in any such covinous and feigned bonds; the one moiety whereof to be to the Crown, and the other moiety to the party grieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges, and other things aforesaid, to be recovered by action in any court of record of competent jurisdiction; and also, being thereof lawfully convicted, shall suffer imprisonment for one half year without bail or mainprize. 13 Eliz. c. 5, s. 2.

Proviso for conveyances by tenants in tail, &c.

3. Where a conveyance made by a tenant in tail is impeached under section 1, such deed shall, nevertheless, be as valid as against the heirs in tail, and all persons entitled in reversion, or remainder, as if this Act had not been made 13 Eliz. c. 5, s. 3.

Proviso for conveyances made *bond fide*, and on good consideration.

4. Sections 1 and 2 or anything therein contained, shall not extend to any estate or interest, in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels, had, made, conveyed or assured, or hereafter to be had, made, conveyed or assured, upon good consideration, and *bond fide*, to any person not having, at the time of such conveyance or assurance to him made, any manner of notice or knowledge of such covin, fraud, or collusion, as is aforesaid; anything before mentioned to the contrary hereof notwithstanding. 13 Eliz. c. 5, s. 5.

Fraudulent conveyances, made to deceive purchasers, declared void as against such purchasers.

5. All and every conveyance, grant, charge, lease, estate, incumbrance, and limitation of use, or, uses, of, in, or out of, any lands, tenements or other hereditaments whatsoever, had or made, or at any time hereafter to be had or made, for the intent and of purpose to defraud and deceive such person as may have purchased, or shall afterwards purchase, in fee simple, fee tail, for life, lives, or years, the same lands, tenements, and hereditaments, or any part or parcel thereof, so formerly conveyed, granted, leased, charged, incumbered, or limited in use, or to defraud and deceive such as have, or shall, purchase any rent, profit or commodity in, or out of, the same, or any part thereof, shall be deemed and taken, only as against that person and his assigns, and against all and every other person lawfully having or claiming by, from, or under him, or them



them, which have purchased, or shall hereafter so purchase, for money or other good consideration the same lands, tenements or hereditaments, or any part or parcel thereof, or any rent, profit or commodity in, or out of, the same, to be utterly void, frustrate and of none effect; any pretence, colour, feigned consideration, or expressing of any use or uses, to the contrary notwithstanding. 27 Eliz. c. 4, s. 1.

6. All and every the parties to such feigned, covinous, and fraudulent, gifts, grants, leases, charges, or conveyances, before expressed, or being privy to, and knowing of, the same or any of them, who shall wittingly and willingly put in use, avow, maintain, justify or defend the same or any of them, as true, simple and done, had or made, *bond fide*, or upon good consideration, to the disturbance or hindrance of the said purchaser or purchasers, lessees, or grantees, or to the disturbance, or hindrance of their heirs, successors, executors, administrators, or assigns, or such as have, or shall lawfully claim, any thing by, from, or under, them, or any of them, shall incur the penalty and forfeiture of one year's value of the said lands, tenements, and hereditaments, so purchased, or charged, the one moiety whereof to be to the Crown, and the other moiety to the party grieved by such feigned and fraudulent gift, grant, lease, conveyance, incumbrance, or limitation of use, to be recovered by action in any court of record of competent jurisdiction; and also, being thereof lawfully convicted, shall suffer imprisonment for one half year without bail or mainprize. 27 Eliz. c. 4, s. 2.

Penalty upon all parties to such fraudulent conveyances, putting the same in effect, one year's value, half to the Crown and half to the party grieved; and half a year's imprisonment.

7. Sections 5 and 6 or anything therein contained, shall not extend, or be construed, to impeach, defeat, make void or frustrate, any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest, or limitation of use or uses, of, in, to, or out of, any lands, tenements or hereditaments, heretofore at any time had or made, or hereafter to be had or made upon, or for, good consideration, and *bond fide*, to any person; any thing before mentioned to the contrary hereof notwithstanding. 27 Eliz. c. 4, s. 3.

Proviso for conveyances made on good consideration, etc.

8. Subject to the provisions of sections 1 and 2 of the Revised Statutes of Ontario, chapter 115, if any person shall make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance, of, in, or out of, any lands, tenements or hereditaments, with any clause, provision, article or condition, of revocation, determination, or alteration, at his will or pleasure, of such conveyance, assurance, grant, limitation of uses or estates, of, in, or out of, the said lands, tenements or hereditaments, or of, in, or out of, any part or parcel of them, contained or mentioned in any writing, deed or indenture of such assurance, conveyance, grant or gift; and after such conveyance, grant, gift, demise, charge, limitation of uses, or assurance, so

Subject to Rev. Stat. c. 115.—Conveyances made revocable, of lands afterwards sold for good consideration, declared void against the purchasers.

made

made or had, shall bargain, sell, demise, grant, convey, or charge the same lands, tenements or hereditaments, or any part or parcel thereof, to any person for money, or other good consideration paid or given, (the said first conveyance, assurance, gift, grant, demise, charge, or limitation not by him revoked, made void or altered, according to the power and authority reserved or expressed unto him in and by the said secret conveyance, assurance, gift, or grant,) then the said former conveyance, assurance, gift, demise and grant, as touching the said lands, tenements and hereditaments, so after bargained, sold, conveyed, demised, or charged, against the said bargainees, vendees, lessees, grantees, and every of them, their heirs, successors, executors, administrators and assigns, and against every person lawfully claiming any thing by, from, or under them, or any of them, shall be deemed taken and adjudged to be void, frustrate, and of none effect, by virtue and force of this present Act: Provided, nevertheless, that no lawful mortgage, made, or to be made, *bonâ fide*, and without fraud or covin, upon good consideration, shall be impeached or impaired by force of this Act, but shall stand in like force and effect as the same should have done if this Act had never been made; any thing in this Act to the contrary in any wise notwithstanding. 27 Eliz. c. 4, s. 4.

Proviso for mortgages.

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2. *INTESTATE SUCCESSION.*

CHAPTER 335.

An Act respecting the Distribution of Intestates' Estates.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Statute of Distribution.*" Short title. *New.*

2. Subject to the provisions of *The Devolution of Estates Act*, the surplusage of the personal estate of any person dying intestate shall be distributed in manner and form following, that is to say, one-third part of the said surplusage to the wife of the intestate, and all the residue by equal portions to and amongst the children of such persons dying intestate, and such persons as legally represent such children in case any of the said children be then dead, other than such child as shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his lifetime by portion equal to the share which shall by such distribution be allotted to the other children, to whom such distribution is to be made. And in case any child shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his lifetime by portion not equal to the share which will be due to the other children by such distribution as aforesaid, then, so much of the surplusage of the estate of such intestate shall be distributed to such child as shall have any land by settlement from the intestate, or was advanced in the lifetime of the intestate, as shall make the estate of all the said children to be equal as near as can be estimated. And in case there be no children, nor any legal representatives of them, then, one moiety of the said estate shall be allotted to the wife of the intestate, and the residue of the said estate shall be distributed equally to every of the next of kindred of the intestate who are in equal degree, and those who legally represent them 22 & 23 Car. 2, c. 10, s. 3, (or ss. 5, and 6, in Ruffhead's Ed.).

Subject to Rev. Stat. c. 127, how, and to whom, surplus to be distributed.

Proviso respecting advancement by portion, etc.

If no children, then moiety to wife, and residue to next of kin.

3. Provided that there be no representations admitted among collaterals after brothers' and sisters' children, and in case

Representation amongst collaterals.

If no children  
then to next  
of kin.

case there be no wife, then, all the said estate shall be distributed equally to and amongst the children, and in case there be no child, then, to the next of kindred in equal degree of, or unto, the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever. 22 & 23 Car. 2, c. 10, s. 4, (or s. 7 in Ruffhead's Ed.).

Subject to  
Rev Stat.  
c. 129, —  
No distribu-  
tion till after  
one year.

If debts after-  
wards appear,  
then all to  
refund pro-  
portionably.

4. To the end that a due regard be had to creditors, subject to the provisions of section 38 of *The Trustee Act*, no such distribution of the goods of any person dying intestate shall be made till after one year be fully expired after the intestate's death, and every one to whom any distribution and share shall be allotted shall give bond with sufficient sureties, that if any debt truly owing by the intestate shall be afterwards sued for and recovered, or otherwise duly made to appear, that then, and in every such case, he shall refund and pay back to the administrator his rateable part of that debt, and of the costs of suit and charges of the administrator by reason of such debt out of the part and share so as aforesaid allotted to him, thereby to enable the said administrator to pay and satisfy the said debt, so discovered after the distribution made as aforesaid. 22 & 23 Car. 2, c. 10, s. 5, (or s. 8 in Ruffhead's Ed.)

Brother and  
sister of  
intestate to  
share equally  
with the  
mother.

5. If after the death of a father any of his children shall die intestate without wife or children in the lifetime of the mother, every brother, and sister, and the representatives of them, shall have an equal share with her, any thing in section 2 of this Act to the contrary notwithstanding. 1 Jac. 2, c. 17, s. 7.

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3. TRUSTEES, EXECUTORS, AND ADMINISTRATORS.

CHAPTER 336.

An Act for the Relief of Trustees.

SHORT TITLE, s. 1.  
 INTERPRETATION, s. 2.  
 JURISDICTION OF COUNTY COURTS,  
 s. 3.  
 PAYMENT INTO COURT BY TRUS-  
 TEES, s. 4.  
 VESTING ORDERS, AND ORDERS RE-  
 LEASING CONTINGENT RIGHTS  
 AS TO LAND :  
 On appointment of new trustees,  
 or absence, or infancy, of trustee,  
 s. 5.  
 Where land is vested in lunatic  
 trustee, or mortgagee, s. 6.  
 Where contingent rights vested in  
 lunatic trustee, or mortgagee, re-  
 lease of, s. 7.  
 Contingent rights of unborn per-  
 sons, may be vested, s. 8.  
 Where mortgagee an infant, vest-  
 ing order may be made, s. 9.  
 When mortgagee not in posses-  
 sion dies, and money secured  
 is paid, vesting order may be  
 made, s. 10.  
 Vesting order consequential on  
 judgment for sale, or mortgage,  
 s. 11.  
 Vesting order consequential on  
 judgment for specific perform-  
 ance, s. 12.  
 EFFECT OF VESTING ORDER OF LANDS,  
 s. 13.  
 APPOINTMENT OF PERSONS TO CON-  
 VEY, s. 14.

VESTING ORDERS, AND ORDERS RE-  
 LEASING CONTINGENT RIGHTS AS  
 TO STOCKS, AND CHOSSES IN AC-  
 TION :  
 On appointment of new trustees,  
 or absence, or infancy, of trustee  
 etc., s. 15.  
 Where a sole trustee or mortgagee  
 is lunatic, s. 16.  
 Where a personal representative  
 is lunatic, s. 17.  
 EFFECT OF VESTING ORDERS OF STOCKS  
 AND CHOSSES IN ACTION, s. 18.  
 INDEMNITY, s. 19.  
 DISCHARGE OF LANDS CHARGED WITH  
 PAYMENT OF MONEY, ON PAYMENT  
 INTO COURT, s. 20.  
 NEW TRUSTEES, POWER OF COURT TO  
 APPOINT, s. 21.  
 WHO MAY APPLY, s. 22.  
 Application to be by petition,  
 s. 23.  
 Hearing of petition, s. 24.  
 Order may be made in any pro-  
 ceeding, s. 25.  
 Orders to be conclusive as to facts  
 on which same are founded,  
 s. 26.  
 Court may exercise powers in  
 favor of charities, s. 27.  
 JUDGMENT IN ABSENCE OF TRUSTEE,  
 s. 28.  
 COSTS, s. 29.  
 PROCEDURE ON TRUSTEES PAYING  
 MONEY INTO COURT, s. 30.

**H**IS MAJESTY, by and with the advice and consent of the  
 Legislative Assembly of the Province of Ontario, enacts  
 as follows :—

1. This Act may be cited as "*The Trustee Relief Act.*" *New.* Short title.
2. The words "The Accountant" in this Act shall mean as regards cases in the High Court of Justice "the Accountant of the Interpretation of words. Accountant.

the Supreme Court of Judicature for Ontario," and, as regards cases in any County Court, the Clerk or Registrar referred to in Consolidated Rule 1221 (2).

**Lands.**

The word "lands" shall extend to, and include, messuages, tenements, and hereditaments, coporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein.

**Securities.**

The word "Securities" includes stocks, funds, and shares.

**Stock.**

The word "stock" includes fully paid up shares, and any fund, annuity, or security transferable in books kept by any incorporated bank, company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein.

**Transfer.**

The word "transfer" in relation to stock, includes the performance and execution of every deed, power of attorney, act or thing, on the part of the transferor, to effect and complete the title in the transferee.

**Seized.**

The word "seized" shall be applicable to any vested interest for life, or of a greater description, and shall extend to estates at law, and in equity, in possession, or in futurity, in any lands.

**Possessed.**

The word "possessed" shall be applicable to any vested estate less than a life estate at law, or in equity, in possession or in expectancy, in any lands.

**Contingent right.**

The words "contingent right," as applied to lands, shall mean a contingent, and executory, interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be, or be not, ascertained; also a right of entry, whether immediate or future, and whether vested, or contingent.

**Convey. Conveyance.**

The words "convey" and "conveyance" applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another, lands whereof such person is seized, or entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance.

**Assign. Assignment.**

The words "assign" and "assignment" shall mean the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring lands of which such person is possessed, either for the whole estate of the person so possessed, or for any less estate.

**Trust.**

The word "trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, the words "trust" and "trustee" shall extend to, and include,

**Trustee.**

implied and constructive trusts, and shall extend to, and include, cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to, and include, the duties incident to the office of personal representative of a deceased person.

The word "lunatic" shall mean any person who shall have been declared a lunatic. Lunatic.

The expression "person of unsound mind" shall mean any person, not an infant, who, not having been declared a lunatic, shall be incapable, from infirmity of mind, to manage his own affairs. Person of un-  
sound mind.

The word "devisee" includes the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description. Devisee.  
Imp. Act,  
56-57 Vict. c.  
53, s. 50, part.

The word "mortgage" shall be applicable to every estate, interest, or property, in lands or personal estate, which would, in a court of equity, be deemed merely a security for money. Mortgage.  
Imp. Act  
56-57 Vict.,  
c. 53, s. 50.

3. The powers and jurisdiction by this Act conferred on the High Court of Justice may, in cases within the jurisdiction of a County Court, be exercised by any County Court, and all provisions therein contained in reference to the said High Court shall extend, and apply to such County Courts when exercising such jurisdiction. *New.* Jurisdiction of  
County Courts  
under Act.

PAYMENT INTO COURT BY TRUSTEES.

4.—(1) Trustees, or the majority of trustees having in their hands, or under their control, money or securities belonging to a trust, may apply to the High Court of Justice, *ex parte* in chambers, for an order of the said Court authorizing them to pay into, or deposit in, the said Court such money, or securities; and the same shall, subject to the rules of Court, be dealt with according to the orders of the said High Court. Payment into  
court by trust-  
ees of trust  
funds or  
securities.

(2) The certificate of the proper officer shall be a sufficient discharge to trustees for the money, or securities, so paid into, or deposited in, Court. Certificate of  
officer a  
discharge.

(3) Where any moneys, or securities, are vested in any persons as trustees, and the majority are desirous of paying the same into or depositing the same in Court, but the concurrence of the other or others cannot be obtained, the High Court may order the payment into, or deposit in, Court, to be made by the majority, without the concurrence of the other or others; and where any such moneys, or securities, are deposited with any banker, or broker, or other depository, the Court may order payment, or delivery, of the moneys, or securities, to the majority of the trustees for the purpose of payment into, or deposit in, Court, and every transfer, payment, and delivery, made in pursuance of such order, shall be valid and take effect as if the same had been made on the authority, or by the act, of all the persons entitled to the moneys, and securities, so transferred, paid, or delivered. Order may be  
made though  
some of  
trustees do  
not concur.  
Imp. Acts 56-  
57 V., c.  
53, s. 42.

Imp. Acts, 10 & 11 Vict. c. 96, ss. 1, 2; 12 & 13 Vict. c. 74, s. 1.

VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS,  
[www.libtool.com.cn](http://www.libtool.com.cn) AS TO LAND.

Vesting orders  
as to land,  
where Court  
may make.  
Imp. Act, 56-  
57, Vict.,  
c. 53, s. 26.

5. In any of the following cases, namely:—

- (i) Where the High Court appoints or has appointed a new trustee; or
- (ii) Where a trustee entitled to, or possessed of, any land, or entitled to a contingent right therein, either solely, or jointly with any other person,—
  - (a) is an infant; or
  - (b) is out of Ontario; or
  - (c) cannot be found; or
- (iii) Where it is uncertain who was the survivor of two or more trustees jointly entitled to, or possessed of, any land; or
- (iv) Where, as to the last trustee known to have been entitled to, or possessed of, any land, it is uncertain whether he is living, or dead; or
- (v) Where there is no heir, or personal representative, of a trustee who was entitled to, or possessed of, land and has died intestate as to that land, or where it is uncertain who is the heir, or personal representative, or devisee, of a trustee who was entitled to, or possessed of, land, and is dead; or
- (vi) Where a trustee jointly, or solely, entitled to, or possessed of, any land, or entitled to a contingent right therein, has been required by, or on behalf of, a person entitled to require a conveyance of the land, or a release of the right, to convey the land, or to release the right, and has wilfully refused or neglected to convey the land, or release the right, for fourteen days after the date of the requirement;

the High Court may make an order (in this Act called a vesting order) vesting the land in any such person in any such manner, and for any such estate, as the Court may direct, or releasing, or disposing of, the contingent right, to such person as the Court may direct.

Provided that—

(a) Where the order is consequential on the appointment of a new trustee, the land shall be vested, for such estate as the Court may direct, in the persons who, on the appointment, are the trustees; and

(b) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of Ontario, or cannot be found, the land or right shall be vested in such other person, either alone, or with some other person. Imp. Act, 13 & 14 Vict. c. 60, ss. 7-18.

6.



6. Where any lunatic, or person of unsound mind, shall be seized, or possessed, of any lands upon any trust, or by way of mortgage, the High Court of Justice may make an order that such lands be vested in such person in such manner, and for such estate, as the said Court shall direct; and the order shall have the same effect as if the trustee, or mortgagee, had been sane, and had duly executed a conveyance, or assignment, of the lands, in the same manner, for the same estate. Where land vested in lunatic trustee or mortgagee, vesting order may be made. Imp. Act, 53 Vict. c. 5, s. 135 (1).

7. Where any lunatic, or person of unsound mind, shall be entitled to any contingent right in any lands upon any trust, or by way of mortgage, the said High Court may make an order wholly releasing such lands from such contingent right, or disposing of the same, to such person as the said Court shall direct; and the order shall have the same effect as if the trustee, or mortgagee, had been sane, and had duly executed a deed so releasing, or disposing of, the contingent right. Where lunatic entitled to a contingent right as trustee or mortgagee, Court may order release. Imp. Act, 53 Vict. c. 5, s. 135 (2).

8. Where the land is subject to a contingent right in an unborn person, or class of unborn persons, who, on coming into existence would, in respect thereof, become entitled to, or possessed of, the land on any trust, the High Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to, or of which, the unborn person, or class of unborn persons, would, on coming into existence, be entitled, or possessed, in the land. Orders as to contingent rights of unborn persons. Imp. Act, 56-57 Vict. c. 53, s. 27.

9. Where any person entitled to, or possessed of, land, or entitled to a contingent right in land, by way of security for money, is an infant, the High Court may make an order vesting, or releasing, or disposing of, the land or right, in like manner as in the case of an infant trustee. Vesting order in place of conveyance by infant mortgagee. Imp. Act, 56-57 Vict. c. 53, s. 28.

10. Where a mortgagee of land has died without having entered into the possession, or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last mentioned person consents to any order for the reconveyance of the land, then the High Court may make an order vesting the land in such person or persons, in such manner, and for such estate, as the Court may direct in any of the following cases, namely:—

(i) Where an heir, or personal representative, or devisee, of the mortgagee is out of Ontario, or cannot be found; or

(ii) Where an heir, or personal representative, or devisee, of the mortgagee, on demand made by, or on behalf of, a person entitled

entitled to require a conveyance of the land, has stated in writing that he will not convey the same, or does not convey ~~the same~~ ~~for the space~~ of fourteen days next after a proper deed for conveying the land has been tendered to him by, or on behalf of the person so entitled; or

(iii) Where it is uncertain which of several devisees of the mortgagee was the survivor; or

(iv) Where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir, or personal representative, of the mortgagee, whether he is living, or dead; or

(v) Where there is no heir, or personal representative, of a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir, or personal representative, or devisee. Imp. Act, 13 & 14 Vict. c. 60, s. 19.

Vesting order consequential on judgment for sale, or mortgage of land.

Imp. Act, 56-57 Vict. c. 53, s. 30.

**11.** Where any Court gives a judgment, or makes an order directing the sale, or mortgage, of any land, every person who is entitled to, or possessed of, the land, or entitled to a contingent right therein as heir, or under the will of a deceased person, for payment of whose debts the judgment was given, or order made, and is a party to the action or proceeding in which the judgment, or order, is given, or made, or is otherwise bound by the judgment, or order, shall be deemed to be so entitled, or possessed, as the case may be, as a trustee within the meaning of this Act; and the High Court may, if it thinks expedient, make an order vesting the land, or any part thereof, for such estate as that Court thinks fit, in the purchaser, or mortgagee, or in any other person. Imp. Acts, 13 & 14 Vict. c. 60, s. 29; and 15 & 16 Vict. c. 55, s. 1.

Vesting order consequential on judgment for specific performance, etc.

Imp. Act, 16-57 Vict. c. 53, s. 31.

**12.** Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange of any land, or, generally, where any judgment is given for the conveyance of any land, either in cases arising out of the doctrine of election, or otherwise, the High Court may declare that any of the parties to the action are trustees of the land, or any part thereof, within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will, or voluntary settlement, of any person deceased, who was, during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and thereupon the High Court may make a vesting order relating to the rights of those persons, born, and unborn, as if they had been trustees. Imp. Act, 13 & 14 Vict. c. 60, s. 30.

## EFFECT OF VESTING ORDERS OF LANDS.

**13.** A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such estate as the High Court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed, and been of full capacity, and had duly executed all proper conveyances of the land for such estate as the Court directs, and shall in every other case have the same effect as if the trustee, or other person, or description or class of persons, to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order. Imp. Act, 15 & 16 Vict. c. 55, s. 6.

Effect of vesting order.

Imp. Act, 56-57 Vict. c. 53, s. 82.

## APPOINTMENT OF PERSONS TO CONVEY.

**14.** In all cases where a vesting order can be made under any of the foregoing provisions, the High Court may, if it is more convenient, appoint a person to convey the land, or release the contingent right, and a conveyance, or release, by that person in conformity with the order shall have the same effect as an order under the appropriate provision. Imp. Act, 13 & 14 Vict. c. 60, s. 20.

Power to appoint person to convey.

Imp. Act, 56-57 Vict. c. 53, s. 33.

## VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS, AS TO STOCKS, AND CHUSES IN ACTION.

**15.—(1)** In any of the following cases, namely :—

(i) Where the High Court appoints, or has appointed, a new trustee ;

(ii) Where a trustee entitled alone, or jointly with another person, to stock, or to a chose in action—

(a) is an infant ; or

(b) is out of Ontario ; or

(c) cannot be found ; or

(d) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover, a chose in action, according to the direction of the person absolutely entitled thereto, for fourteen days next after a request in writing has been made to him by the person so entitled ; or

(e) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover a chose in action, for fourteen days next after an order of the High Court for that purpose has been served on him ; or

Vesting orders as to stock and choses in action, when court may make.

Imp. Act, 56-57 Vict. c. 53, s. 35.

(iii)

(iii) Where it is uncertain whether a trustee entitled alone, or jointly with another person, to stock, or to a chose in action, is alive or dead, the High Court may make an order vesting the right to transfer, or call for a transfer of, stock, or to receive the dividends or income thereof, or to sue for, or recover, a chose in action, in any such person as the Court may appoint;

Provided that—

(a) Where the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

(b) When the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last mentioned person either alone, or jointly with any other person whom the Court may appoint.

Appointment of person to transfer.

(2) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make, or join in making, the transfer.

Transfer, how to be made.

(3) The person in whom the right to transfer, or call for the transfer, of any stock is vested by an order of the Court under this Act, may transfer the stock to himself, or any other person, according to the order, and all incorporated banks, and all companies, shall obey every order under this section according to its tenor.

After notice of order, no transfer to be made contrary thereto.

(4) After notice in writing of an order under this section it shall not be lawful for any incorporated bank, or any company, to transfer any stock to which the order relates, or to pay any dividends thereon, except in accordance with the order.

Court may make declaration.

(5) The High Court may make declarations and give directions concerning the manner in which the right to any stock, or chose in action, vested under the provisions of this Act, is to be exercised.

Ships, shares in.

Imp. Act, 56-57 Vict. c. 53, s. 35.

(6) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping, as if they were stock. Imp. Act, 13 & 14 Vict. c. 60, ss 20, 22-25.

Where lunatic solely entitled as trustee, or mortgagee, to stock, or chose in action, Court may make vesting order.

16. Where any lunatic, or person of unsound mind, shall be solely entitled to any stock, or to any chose in action, upon any trust or by way of mortgage, it shall be lawful for the said High Court to make an order vesting in any person the right to transfer such stock, or to receive the dividends or income thereof, or to sue for, and recover, such chose in action, or any interest in respect thereof; and when any person shall be entitled jointly with any lunatic, or person

of

of unsound mind, to any stock, or chose in action, upon any trust, or by way of mortgage, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for, and recover, such chose in action, or any interest in respect thereof, either in such person so jointly entitled as aforesaid, or in such last mentioned person together with any other person the said Court may appoint. Imp. Act, 13 & 14 Vict., c. 60, s. 5.

Imp. Act, 53  
Vict, c. 5,  
s. 136 (1), (2).

17. Where any stock shall be standing in the name of any deceased person whose personal representative is a lunatic, or person of unsound mind, or where any chose in action shall be vested in any lunatic, or person of unsound mind, as the personal representative of a deceased person, it shall be lawful for the said Court to make an order vesting the right to transfer such stock, or receive the dividends or income thereof, or to sue for, and recover, such chose in action, or any interest in respect thereof, in any person the Court may appoint. Imp. Act 13 & 14 Vict. c. 60, s. 6.

Where stock or chose in action standing in name of personal representative who is lunatic, court may make vesting order.

Imp. Act, 53  
Vict. c. 5,  
s. 136 (3).

EFFECT OF VESTING ORDERS OF STOCKS AND CHOSSES IN ACTION.

18. Where any order shall have been made under the provisions of this Act by the said High Court vesting the legal right to sue for, or recover, any chose in action, or any interest in respect thereof, in any person, such legal right shall vest accordingly, and thereupon it shall be lawful for the person so appointed to carry on, commence and prosecute, in his own name any action, or proceeding, for the recovery of such chose in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for, or recovered, such chose in action. Imp. Act, 13 & 14 Vict. c. 60, s. 27.

Effect of vesting order.

Imp. Act, 56-  
57 Vict.  
c. 53, s. 32.

INDEMNITY.

19. This Act, and every order purporting to be made under this Act, shall be a complete indemnity to all incorporated banks, and to all companies, and persons, for any acts done pursuant thereto; and it shall not be necessary for any bank, company, or person, to inquire concerning the propriety of the order, or whether the Court by which it was made had jurisdiction to make the same. Imp. Act 15 & 16 Vict. c. 55, s. 7.

Indemnity

Imp. Act 56-  
57 Vict.  
c. 53, s. 49.

DISCHARGE OF LANDS CHARGED WITH PAYMENT OF MONEY, ON PAYMENT INTO COURT.

20. Where any infant, or person of unsound mind, shall be entitled to any money payable in discharge of any lands, stock, or chose in action, conveyed, assigned, or transferred

Moneys charged on land, stock, etc., to which

infant, or lunatic, entitled, may be paid into Court.

red, under this Act, it shall be lawful for the person by whom such money is payable to pay the same into the High Court of Justice in trust in any cause then depending concerning such money, or, if there shall be no cause, to the credit of such infant, or person of unsound mind, subject to the order or disposition of the said Court. Imp. Act. 13 & 14 Vict. c. 60, s. 48.

#### APPOINTMENT OF NEW TRUSTEES, AND VESTING ORDERS.

Power of the Court to appoint new trustees.

Imp. Act 56. 57 Vict. c. 58, s. 25.

21.—(1) The High Court may, whenever it is expedient to appoint a new trustee, or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee, or new trustees, either in substitution for, or in addition to, any existing trustee or trustees, or although there is no existing trustee. In particular, and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3) Nothing in this section shall give power to appoint an executor, or administrator. Imp. Act 13 & 14 Vict. c. 60, ss. 32, 36, and 15 & 16 Vict. c. 55, s. 9.

#### WHO MAY APPLY.

Who may apply for appointment of new trustee, or vesting order, etc.

22. An order under any of the hereinbefore contained provisions for the appointment of a new trustee, or concerning any lands, stock, or chose in action, subject to a trust, may be made upon the application of any person beneficially interested in such lands, stock, or chose in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and an order under any of the provisions hereinbefore contained concerning any lands, stock, or chose in action, subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage. Imp. Act 13 & 14 Vict. c. 60, s. 37.

Application may be by petition.

23. Any person entitled in manner aforesaid to apply for an order may present a petition in the first instance to the said Court for such an order as he may deem himself entitled to, and may give evidence by affidavit, or otherwise, in support of such petition, and may serve such person with notice of such petition

petition as he may deem entitled thereto. Imp. Act 13 & 14 Vict. c. 60, s. 40.

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24. Upon the hearing of any such application the said Court may direct a reference to inquire into any facts which require investigation, or may direct the application to stand over to enable fuller evidence to be adduced, or further notice to be served. Imp. Act 13 & 14 Vict. c. 60, s. 41.

Hearing of petition.

25. Where in any proceeding the facts necessary for an order under this Act shall appear to the Court to be sufficiently proved, the said Court may make such order. See Imp. Act 13 & 14 Vict. c. 60, s. 43.

Order may be made in any proceeding where necessary facts are proved.

26. Where a vesting order is made as to any land under this Act, founded on an allegation of the personal incapacity of a trustee, or mortgagee, or on an allegation that a trustee, or the heir, or personal representative, or devisee, of a mortgagee is out of Ontario, or cannot be found, or that it is uncertain which of the several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir, or personal representative, or last surviving devisee, of a mortgagee, is living or dead, or on an allegation that any trustee, or mortgagee, has died intestate without an heir, or has died, and it is not known who is his heir, or personal representative, or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section shall not prevent the High Court from directing a reconveyance, or the payment of costs occasioned by any such order if improperly obtained. Imp. Act 13 & 14 Vict. c. 60, s. 44.

Orders made upon certain allegations to be conclusive evidence

Imp. Act 56-57 Vict. c. 53, s. 40.

27. The High Court may exercise the powers herein conferred for the purpose of vesting any lands, stock, or chose in action, in the trustee, or trustees, of any charity, or society, over which charity, or society, the said Court would have jurisdiction, upon action duly instituted, whether such trustee, or trustees, shall have been duly appointed by any power contained in any deed, or instrument, or by the order, or judgment, of the said High Court, or by order made upon a petition to the said Court, under any statute authorizing the said Court to make an order to that effect in a summary way. Imp. Act 13 & 14 Vict. c. 60, s. 45.

Court may exercise powers in favor of charities, etc.

Imp. Act, 56-57 Vict., c. 53, s. 39.

#### JUDGMENT IN ABSENCE OF TRUSTEE.

28. Where, in any action, the High Court is satisfied that diligent search, and inquiry, has been made after any person, who, in the character of a trustee, is made a defendant

Power to give judgment in absence of a trustee.

Imp. Act 56.  
57 Vict. c. 53,  
s. 48.

defendant in any action, to serve him with the process of the Court, and that he cannot be found, the Court may hear and determine the action, and give judgment therein against that person in his character of a trustee, as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character. Imp. Act 13 & 14 Vict. c. 60, s. 49.

#### COSTS.

Jurisdiction  
as to costs.

Imp. Act, 56-  
57 Vict., c. 53,  
s. 38.

**29.** The High Court may order the costs and expenses of, and relating to, the petitions, orders, directions, conveyances, assignments, and transfers, to be made in pursuance of this Act, or any of them, to be paid and raised out of, or from the lands, or personal estate, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Court shall think proper. Imp. Act 13 & 14 Vict. c. 60, s. 51.

#### PROCEDURE ON TRUSTEES PAYING MONEY INTO COURT.

Applications  
to pay money  
into Court  
under Trustee  
Relief Act,  
how to be  
made.

**30.—**(1) Subject to Rules of Court the following procedure shall be observed:—

On an application to pay money into Court or to deposit securities in Court under this Act, the applicant shall file an affidavit entitled in the High Court of Justice. "In the matter of (*specifying shortly the trust and the instrument creating it*)," which affidavit shall set forth:—

- (i) The deponent's name and address.
- (ii) The amount and description of the moneys or securities in question.
- (iii) A statement whether the estate or succession duty (if chargeable) or any part thereof has been paid.
- (iv) The names and addresses, as far as known to the deponent, of all persons interested in, or entitled to, the moneys or securities in question; and whether or not such persons are under any disability, by reason of infancy, or unsoundness of mind, to the best of his knowledge and belief.
- (v) His submission to answer all such questions relating to the application of the money and securities in question as the Court or Judge may make or direct.
- (vi) The place where he is to be served with any petition, notice, or other proceeding, relating to the money or securities in question.

(2) Every order made on such application shall direct the applicant forthwith to give notice thereof, by prepaid letter through



through the post, to the several persons whose names and places of residence are stated in his affidavit as interested in, or entitled to, the moneys or securities paid into, or deposited in, Court, (except in the case of infants, or persons of unsound mind,) and to the Official Guardian *ad litem* on behalf of all infants, and persons of unsound mind.

(3) It shall be the duty of the Official Guardian *ad litem*, whenever practicable, forthwith to communicate to the parents, guardians, or committee, of any person on whose behalf he may be so notified, the contents of such order. Notice of Order.

(4) The notice of an order made under the said Act may be in the following form, or to the like effect.

IN THE HIGH COURT OF JUSTICE.

In the matter of (*specifying trust &c., as in the affidavit.*)

Take notice that pursuant to the order of the Court dated the \_\_\_\_\_ day of \_\_\_\_\_ I have paid into Court to the credit of the above mentioned matter \$ \_\_\_\_\_

*or* I have deposited in the Court to the credit of the above mentioned matter the following securities (*specifying them*) in which moneys [*or securities*] you appear to be interested as (*stating shortly how e.g. as legatee under the will of A. B.*)

Dated this \_\_\_\_\_ day of \_\_\_\_\_

*Signature of applicant, in person,  
or by his Solicitor.*

(5) Notice of all applications respecting money or securities paid into, or deposited in, Court under this Act shall be served on the trustee, and the persons directed to be notified of such payment or deposit, unless such service be dispensed with by the Court, or a Judge. *New.*

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## CHAPTER 337.

### An Act respecting Executors and Administrators.

<p><b>EXECUTORS,</b>          citation of, to prove will, ss. 1-2.          infant executor, administration with will annexed, during minority, ss. 3-4.</p> <p><b>ADMINISTRATORS,</b>          who entitled to be appointed, s. 5.          powers of, s. 6.          account by, s. 7.          fraudulent administrator, chargeable as executor <i>de son tort</i>, s. 8.</p> <p><b>INVENTORIES,</b>          persons applying for probate or administration, to file, s. 9.</p>	<p><b>POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS,</b>          executors to have action of account, s. 10.          executors and administrators may recover rent, s. 11.          power to sell lands, s. 12.          executor, rights of, as to residue, ss. 14-15.</p> <p><b>REPRESENTATIVES OF DECEASED EXECUTORS, OR ADMINISTRATORS,</b>          liability of, ss. 16-17.</p> <p><b>LANDS SOLD FOR DEBTS,</b>          conveyance of, ss. 18-19.</p> <p><b>PROPERTY SUBJECT TO POWER, WHEN TO BE ASSETS, s. 20.</b></p>
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**HIS MAJESTY**, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

#### EXECUTORS

Surrogate Judge may cite executor named in will to prove or renounce.

1. The Surrogate Judge having jurisdiction in the premises may cite before him any person named executor of any will to prove or refuse to prove such will, and to bring in inventories and to do every other thing necessary or expedient concerning the same. 21 Hen. 8 c. 5, s. 6.

An executor not acting or not appearing to a citation, to be treated as if he had renounced.

2. Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator, and the administration of his effects, shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor. Imp. Act 21 & 22 Vict. c. 95, s. 16.

Where an infant sole executor, administration to be granted to the guardian, etc.

3. Where an infant is sole executor, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the Surrogate Judge shall think fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will shall be granted to him. Imp. Act 38 Geo. 3 c. 87, s. 6,

4.

4. The person to whom such administration shall be granted shall have the same powers vested in him as an administrator now hath by virtue of an administration granted to him *durante minore ætate* of the next of kin. Imp. Act 38 Geo. 3, c. 87, s. 7.

Who shall have the same power as where administration is granted *durante minore ætate* of the next of kin.

ADMINISTRATORS.

5. Subject to the provisions of *The Surrogate Courts Act*, where any person dies intestate, or the executor named in his will refuses to prove the same, administration of the property of the deceased may be committed by the Surrogate Court having jurisdiction, to the husband, or to the wife, or to the next of kin, or to the wife and next to kin, or to the next and most lawful friends of the deceased, as in the discretion of the said Judge shall seem best; and in case divers persons claim the administration as next of kin who are equal in degree of kindred to the deceased, or where one only desireth the administration as next of kin, where there are in fact divers persons of equal kindred as aforesaid, then in every such case the administration may be committed to such one or more of such next of kin as the said Judge may think fit. 31 Ed. 3, St. 1, c. 11, and 21 Hen. 8, c. 5, s. 2, and Common Law.

Rev. Stat. c. 59. To what persons administration shall be granted.

6. Administrators appointed by the Surrogate Court to administer the estate of a deceased person shall be entitled to sue for, and recover, the debts and other property of the deceased, and shall be accountable for the due administration of the same in like manner as executors. 31 Ed. 3, St. 1, c. 11.

Administrators to be entitled to recover property of deceased and to be accountable therefor as executors.

7. No administrator shall be cited to any court to render an account of the estate of his intestate (otherwise than by an inventory thereof) unless it be at the instance and prosecution of some person on behalf of a minor, or having a demand out of such estate as a creditor, or next of kin, nor be compellable to account before any Judge otherwise than as aforesaid. 1 Jac. 2, c. 17, s. 6.

Administrators not compellable to account (except by inventory) but at the instance of persons interested.

8. Forasmuch as it is often put in practice to the defrauding of creditors, that such persons as are to have the administration of the goods of others dying intestate committed unto them if they require it, will not accept the same, but suffer or procure the administration to be granted to some stranger of mean estate, and not of kin to the intestate, from whom themselves, or others by their means, do take deeds of gift, and authorities by letters of attorney, whereby they obtain the estate of the intestate into their hands, and yet stand not subject to pay any debts owing by the same intestate, and so the creditors for lack of knowledge of the place of habitation of the administrator cannot arrest him or sue him, and, if they fortune to find him out, yet, for lack of ability in him to satisfy of his own goods the value of that he hath conveyed away

Fraudulent administrator shall be charged as executor of his own wrong.

away of the intestate's goods, or released of his debts by way of wasting, the creditors cannot have, or recover, their just and due debts; Therefore every person that hereafter shall obtain, receive, or have, any goods, or debts, of any person dying intestate, or a release, or other discharge, of any debt, or duty, that belonged to the intestate, upon any fraud, or without such valuable consideration as shall amount to the value of the same goods, and debts, or near thereabouts, except it be in or towards satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the intestate at the time of his decease, shall be charged and chargeable as executor of his own wrong, and so far only as all such goods, and debts, coming to his hands, or whereof he is released, or discharged, by such administrator, will satisfy, deducting, nevertheless, to and for himself, allowance of all just due, and principal debt, upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful executors or administrators may and ought to have and pay by the laws and statutes of this Province. This provision is subject to section 34 of *The Trustee Act*. 43 Eliz. c. 8, s. 1.

Allowing him all just payments, etc.

Rev. Stat. c. 129.

#### INVENTORIES.

**Inventory to be filed by person applying for probate, or administration.** 9.—(1) The person applying for a grant of probate, or administration, shall, before the same is granted, make or cause to be made a true and perfect inventory in duplicate of all the property which belonged to the deceased at the time of his death; such inventory shall be verified by the applicant, upon his oath, to be good and true; and one copy thereof shall be delivered by him into the keeping of the proper Surrogate Court having power to grant probate of the testament, or letters of administration to the estate of the deceased, and the other copy thereof shall remain with the person to whom the grant is made. 21 Hen. 8, c. 5, s. 4.

Further inventory of subsequently discovered property.

(2) In case after the grant of probate, or letters of administration, any property belonging to the deceased at the time of his death, and not included in such inventory, shall be discovered by the executor, or administrator, he shall, within six months thereafter, make and deliver to the Surrogate Court by which such grant was made an inventory of such newly discovered property duly verified by oath as aforesaid. *New.*

Inventory in case of limited grant.

(3) In case the application, or grant, is limited to part only of the property of the deceased it shall be sufficient to set forth in such inventory the property intended to be affected by such application or grant. *New.*

Rule 19 of Surrogate Court.

(4) The provisions of Rule 19 of the Surrogate Court Rules (1894) with regard to the exhibition of an inventory by an executor, or administrator, shall not be construed as rendering

ing an executor, or administrator, who has complied with the foregoing provisions, liable to be called upon to furnish a further inventory, except in the cases provided for by section 73 of *The Surrogate Courts Act.* *New.* Rev. Stat. c. 59.

POWERS AND DUTIES OF EXECUTORS, AND ADMINISTRATORS.

10. An executor shall have an action of account as the testator might have had if he had lived. 13 Ed. 1, (St. of Westminster, Sec.) c. 23. Executor to have action of account.

11. The executors or administrators of any lessor or landlord may sue for the arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done if living. 32 Hen. 8, c. 37, s. 1. Executor or administrator may sue for rent due deceased.

(See R.S.O. c. 129, ss. 13, 14).

12. Subject to the provisions of *The Devolution of Estates Act*, where a testator by his will doth devise or direct lands to be sold by his executors, such sale may be validly made by such one or more of the executors as shall take upon him, or them, the care and charge of the said will, and a conveyance by such executor or executors shall be as valid and effectual in law as if all of the executors named in the will had joined therein. 21 Hen. 8, c. 4, s. 1. Rev. Stat. c. 127. Executors proving will to have power to sell.

13. Executors of executors shall have the same actions for the debts and property of the first testator as he would have had if in life; and shall be answerable for such of the debts and property of the first testator as they shall recover as the first executors should do if they had recovered the same. (See 25 Ed. 3, Stat. 5, c. 5.) Executors of executors to have rights and liabilities of first executors.

14. When any person shall die having by will, or codicil, appointed any person to be executor, such executor shall be deemed to be a trustee for the person (if any) who would be entitled to the estate under *The Statute of Distribution*, in respect of any residue not expressly disposed of, unless it shall appear by the will, or codicil, that the person so appointed executor was intended to take such residue beneficially. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 40, s. 1. Executor, trustee of residue undispensed of for next of kin under Rev. Stat. c. 335, unless it appear by the will that he was intended to take beneficially.

15. Nothing herein contained shall affect or prejudice any right to which any executor, if this Act had not been passed, would have been entitled, in cases where there is not any person who would be entitled to the testator's estate under *The Statute of Distribution*, in case of an intestacy, in respect of any residue not expressly disposed of. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 40, s. 2. Not to affect rights of executors where there is not any person entitled to the residue under Rev. Stat. c. 335.

LIABILITY

LIABILITY OF REPRESENTATIVES OF EXECUTORS AND ADMINISTRATORS.

Executors, etc. of executors in their own wrong wasting goods of the deceased, liable as their testator, etc.

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16. The executors and administrators of any person who, as executor in his own wrong, or as administrator, shall waste or convert any goods, chattels, estate, or assets, of any person deceased, to his own use, shall be liable and chargeable in the same manner as their testator, or intestate, would have been if he had been living. 30 Car. 2, c. 7, s. 1.

Liability of executor or administrator of a deceased executor for devastavit.

17. Every executor, or administrator, of an executor, or administrator of right, who shall waste, or convert to his own use, goods, chattels, or estate, of his testator, or intestate, shall be liable and chargeable in the same manner as his testator, or intestate, should, or might, have been; any law or usage to the contrary notwithstanding. 4 W. & M. c. 24, s. 12.

CONVEYANCE OF LANDS SOLD FOR DEBTS.

Infants to make conveyances under order of the Court of real estates directed to be sold for payment of debts.

18.—(1) Where any action shall be instituted in any Court for the payment of any debts of any person deceased to which the estate may be subject or liable, and such Court shall order the estates liable to such debts, or any of them, to be sold, or mortgaged, for satisfaction of such debts, and by reason of the infancy of any heir, or devisee, an immediate conveyance thereof cannot, be compelled, in every such case such Court shall direct, and if necessary, compel, such infant to convey such estates so to be sold, or mortgaged, by all proper assurances in the law to the purchaser, or mortgagee thereof, and in such manner as the said Court shall think proper and direct; and every such infant shall make such conveyance, or mortgage, accordingly; and every such conveyance, or mortgage, shall be as valid and effectual to all intents and purposes as if such person being an infant was, at the time of executing the same, of the full age of twenty-one years. Imp. Act, 11 Geo. 4 & 1 W. 4, c. 47, s. 11, as amended by 2 & 3 Vict. c. 60, s. 1.

Surplus to descend as land would have done.

(2) The surplus of money from such sale, or mortgage, shall descend in the same manner as the estates so sold, or mortgaged, would have done. Imp. Act, 2 & 3 Vict. c. 60, s. 2.

Persons having a life interest may, by order of the Court, convey the fee of estates ordered to be sold for payment of debts.

19. Where any lands, tenements, or hereditaments shall be devised in settlement by any person whose estate shall by law be liable to the payment of any of his debts, and by such devise shall be vested in any person for life, or other limited interest, with any remainder, limitation, or gift over, which may not be vested, or may be vested in some person from whom a conveyance or other assurance of the same cannot be obtained, or by way of executory devise, and an order shall be made for the sale thereof for the payment of such debts, or any of them, it shall be lawful for the Court to direct

direct the tenant for life, or other person having a limited interest, or the first executory devisee thereof, to convey, release, assign, surrender, or otherwise assure the fee simple, or other the whole interest or interests so to be sold, to the purchaser, or in such manner as the said Court shall think proper; and every such conveyance, release, surrender, assignment, or other assurance, shall be as effectual as if the person who shall make and execute the same were seized, or possessed, of the fee simple, or other whole estate, so to be sold. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 47, s. 12.

PROPERTY SUBJECT TO POWER, WHEN TO BE ASSETS.

20. Property, real and personal, over which a deceased person has a general power of appointment which he may exercise for his own benefit without the assent of any other person, shall be assets for the payment of his debts, where the same is appointed by his will; and, under an execution against the personal representatives of such deceased person, such assets may be seized and sold, after the deceased person's own property has been exhausted. (*See 3 W. & M. c. 14*); 2 Ed. 7 c. 1, s. 6. Exercise of general power by will, effect of.

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## SECTION XXIII.

### MERCANTILE LAW.

#### 1. STATUTE OF FRAUDS.

### CHAPTER 338.

#### An Act for Prevention of Frauds and Perjuries.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

Short title.

1. This Act may be cited as *The Statute of Frauds. New.*

Reasons for passing this Act.

2. For prevention of many fraudulent practices which are commonly endeavoured to be upheld by perjury, and subornation of perjury, all leases, estates, interests of freehold, or terms of years, or any uncertain interest of, in, to, or out of, any messuages, lands, tenements, or hereditaments, made or created by livery and seizin only, or by parol, and not put in writing and signed by the parties so making, or creating, the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect; any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding. 29 Car. 2, c. 3, s. 1.

Parol leases and interests of freehold, etc., to have the force of estates at will only.

(See also *R.S.O. c. 119, s. 7.*)

Except leases not exceeding three years, etc.

3. Except, nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term shall amount unto two third parts at the least of the full improved value of the thing demised. 29 Car. 2, c. 3, s. 2.

No leases, or estates of freehold, etc., to be granted or surrendered but by writing signed.

4. And, moreover, no leases, estates or interests, either of freehold, or terms of years, or any uncertain interest, of, in, to, or out of, any messuages, lands, tenements, or hereditaments, shall be assigned, granted, or surrendered, unless it be by deed, or note  
in



in writing, signed by the party so assigning, granting, or surrendering, the same, or his agent thereunto lawfully authorized by writing, or by act and operation of law. 29 Car. 2, c. 3, s. 3.

(See R.S.O. c. 119, ss. 3, 7.)

5. No action shall be brought whereby to charge any executor, or administrator, upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriages, of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements, or hereditaments, or any interest in, or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some person thereunto by him lawfully authorized. 29 Car. 2, c. 3, s. 4.

No action against executors, etc., upon a special promise; or upon any agreement, or contract for sale of lands, etc., unless agreement, etc. be in writing and signed.

6. All declarations or creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void, and of none effect. 29 Car. 2, c. 3, s. 7.

Declarations or creations of trusts of land to be in writing signed.

7. Provided always, that where any conveyance shall be made of any lands or tenements, by which a trust or confidence shall or may arise, or result, by the implication, or construction, of law, or be transferred, or extinguished, by an act, or operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made; any thing herein before contained to the contrary notwithstanding. 29 Car. 2, c. 3, s. 8.

Proviso for trusts arising, transferred, or extinguished, by implication of law.

8. All grants and assignments of any trust or confidence shall likewise be in writing signed by the party granting or assigning the same, or by such last will or devise, or else shall likewise be utterly void, and of none effect. 29 Car. 2, c. 3, s. 9.

Assignments of trusts shall be in writing.

9. It shall and may be lawful for every sheriff, or other officer, to whom any writ or precept is, or shall be, directed at the suit of any person of, for, and upon, any judgment, statute, or recognizance, hereafter to be made or had, to do, make, and deliver execution unto the party, in that behalf suing, of all such lands, tenements, rectories, rents, and hereditaments, as any other person be in any manner of wise seized, or possessed, or hereafter shall be seized, or possessed, in trust for him, against whom execution is so sued, like as the sheriff

Lands, etc., of cestui que trust liable to judgmente, etc.,

and held free from the incumbrances of the persons seized in trust.

Trust shall be assets by descent.

or other officer might, or ought to have done, if the said party against whom execution hereafter shall be so sued had been seized of such lands, tenements, rectories, rents, or other hereditaments, of such estate as such other person be seized of in trust for him, at the time of the said execution sued; which lands, tenements, rectories, rents, and other hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed, freed and discharged from all incumbrances of such person as shall be so seized, or possessed, in trust for the person against whom such execution shall be sued; and if any *cestui que trust* hereafter shall die leaving a trust in fee simple to descend to his heir, then, and in every such case, such trust shall be deemed and taken, and is hereby declared, to be assets by descent, and the heir shall be liable to, and chargeable with, the obligation of his ancestors for, and by reason of, such assets, as fully and amply as he might, or ought to have been, if the estate in law had descended to him in possession, in like manner as the trust descended; any law, custom, or usage, to the contrary, in any wise notwithstanding. 29 Car. 2, c. 3, s. 10.

(See R.S.O. c. 127, s. 3.)

But heir shall not by reason thereof become chargeable of his own estate.

10. Provided always, no heir that shall become chargeable by reason of any estate, or trust, made assets in his hands by this law, shall by reason of any kind of plea or confession of the action, or suffering judgment by *nient dedire*, or any other matter, be chargeable to pay the condemnation out of his own estate, but execution shall be sued of the whole estate so made assets in his hands by descent, in whose hands soever it shall come after the writ purchased, in the same manner as it is to be at and by the common law, where the heir at law pleading a true plea judgment is prayed against him thereupon; anything in the present Act contained to the contrary notwithstanding. 29 Car. 2, c. 3, s. 11.

Writs of execution to bind the property of goods but from the time of their delivery to the officer.

11. No writ of *fieri facias*, or other writ of execution, shall bind the property of the goods, against which such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, or coroner to be executed, and, for the better manifestation of the said time, the sheriff, under-sheriff, and coroner, their deputies, and agents, shall, upon the receipt of any such writ (without fee for doing the same), indorse upon the back thereof the day of the month and year whereon he or they received the same. 29 Car. 2, c. 3, s. 15, (or s. 16 in Ruffhead's Ed.).

(See R. S. O., c. 77, s. 7.)

In what cases only contracts for sales of goods

12. No contract for the sale of any goods, wares, or merchandises, for the price of forty dollars, or upwards, shall be allowed to be good, except the buyer shall accept part of

of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized. 29 Car. 2, c. 3, s. 16, (or s. 17 in Ruffhead's Ed.)

for \$40 or more to be binding.

(See R.S.O., c. 146, s. 9.)

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## 2. INSURANCE.

### CHAPTER 339.

#### An Act respecting Insurance.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

No insurance to be made on lives, etc., by persons having no interest, etc.

1. No insurance shall be made by any person on the life of any person, or on any other event whatsoever, wherein the person for whose use, or benefit, or on whose account such policy shall be made, shall have no interest, or by way of gaming or wagering; and every insurance made contrary to the true intent and meaning hereof shall be null and void to all intents and purposes whatsoever. 14 Geo. 3, c. 48, s. 1.

(See also R. S. O. c. 203, ss. 150, 151.)

No policies on lives without inserting the names of persons interested, etc.

2. It shall not be lawful to make any policy on the life of any person or other event, without inserting in such policy the person's name interested therein, or for whose use, or benefit, or on whose account, such policy is so made, or underwritten. 14 Geo. 3, c. 48, s. 2.

How much may be recovered where the insured hath interest in lives, etc.

3. In all cases where the insured hath interest in such life, or event, no greater sum shall be recovered or received from the insurer than the amount of the value of the interest in such life, or other event. 14 Geo. 3, c. 48, s. 3.

Not to extend to insurances on ships, goods, etc.

4. Nothing contained in the preceding sections shall extend to insurances *bond fide* made by any person on ships, goods, or merchandises, but every such insurance shall be as valid and effectual in the law as if this Act had not been made. 14 Geo. 3, c. 48, s. 4.

No insurance to be made on ships or effects, etc., without interest, or by way of wager.

5. No insurance shall be made by any person on any ship belonging to His Majesty, or any of his subjects, or on any goods, merchandises, or effects laden, or to be laden, on board of any such ship, interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering, or without benefit of salvage to the insurer; and every such insurance shall be null and void to all intents and purposes. 19 Geo. 2, c. 37, s. 1.

6.

6. Provided always that insurance on private ships of war, fitted out by any of His Majesty's subjects solely to cruise against His Majesty's enemies, may be made by, or for, the owners thereof, interest or no interest, free of average, and without benefit of salvage to the insurer; anything herein contained to the contrary thereof in any wise notwithstanding. 19 Geo. 2, c. 37, s. 2.

Insurance on private ships of war may be made for the owners.

7. In all actions brought by the insured upon any policy of insurance, the plaintiff in such action, or his solicitor or agent, shall, within fifteen days after he shall be required so to do in writing by the defendant, or his solicitor or agent, declare in writing what sum or sums he hath insured, or caused to be insured, in the whole, and what sums he hath borrowed at *respondentia*, or bottomry, for the voyage, or any part of the voyage, in question in such action. 19 Geo. 2, c. 37, s. 6.

In all actions plaintiff to declare within 15 days what sums he hath insured.

8. It shall not be lawful for any person to make, or effect, or cause to be made, or effected, any policy of insurance upon any ship or vessel, or upon any goods, merchandises, effects or other property whatsoever, without first inserting, or causing to be inserted, in such policy of insurance the name, or the usual style and firm of dealing, of one or more of the persons interested in such insurance, or without, instead thereof, first inserting, or causing to be inserted, in such policy of insurance the name or names, or the usual style and firm of dealing, of the consignor, consignee, of the goods, merchandises, effects or property, so to be insured, or the name, or the usual style and firm of dealing, of the person residing in Ontario, who shall receive the order for, and effect, such policy of insurance, or of the person who shall give the order or direction to the agent immediately employed to negotiate, or effect, such policy of insurance. 28 Geo. 3, c. 56. s. 1.

No policy to be made on any ship, etc., without inserting therein the name or names or the firm of dealing of one or more of the persons interested, etc.

9. Every policy of insurance made or underwritten contrary to the true intent and meaning of section 8 shall be null and void to all intents and purposes whatsoever. 28 Geo. 3, c. 56, s. 2.

Policies made contrary to this Act to be void.

10. This Act is subject to the provisions of *The Ontario Insurance Act*.

Act subject to Rev. Stat. c. 208.

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## SECTION XXIV.

### LAWS AFFECTING SPECIAL CLASSES OF PERSONS (2).

#### 1. PARENT AND CHILD (2).

#### CHAPTER 340.

#### An Act respecting Infants. (2).

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

#### ILLEGITIMACY.

Persons born out of matrimony.

1. It is declared that persons born out of matrimony do not become legitimate by the subsequent marriage of their parents. 20 Hen. 3, (St. of Merton) c 9.

#### GUARDIANSHIP, AND CUSTODY OF, INFANTS.

Subject to Rev. Stat. c. 168, Fathers may dispose of the custody of children during their minority.

2. Subject to the provisions of *An Act respecting Infants*, where any person shall have any child under the age of twenty-one years and not married at the time of his death, it shall be lawful for the father of such child, whether born at the time of the decease of the father, or at the time *en ventre sa mere*, or whether such father be within the age of twenty-one years or of full age, by his deed executed in his life time, or by his last will and testament in writing in the presence of two or more credible witnesses, in such manner, and from time to time as he shall respectively think fit, to dispose of the custody and tuition of such child for and during such time as he shall remain under the age of twenty-one years, or any lesser time, to any person in possession or remainder, and such disposition shall be good and effectual against all and every person claiming the custody or tuition of such child as guardian in socage, or otherwise; and such person to whom the custody of such child shall be so disposed or devised as aforesaid may maintain an action against any person who shall wrongfully take away, or detain, such child, for the recovery of such child, and may recover damages for such taking away

Action of guardian for protection of ward.

away, or detention, in the said action, for the use and benefit of such child. 12 Car. 2, c. 24, s. 8.

3. Such person to whom the custody of such child hath been, or shall be, so disposed, or devised, shall take into his custody, to the use of such child, the profits of all lands tenements and hereditaments of such child, and also the custody and tuition of such child, and the management of the goods, chattels, and personal estate of such child, till his age of twenty-one years, or any lesser time, according to such disposition aforesaid, and may bring such action in relation thereunto as by law a guardian in common socage might do. 12 Car. 2, c. 24, s. 9.

Custody of lands and personal estate of children, in guardians, who may bring action, etc.

LEASES, ETC.

4. Where any person, being under the age of twenty-one years, is entitled to any lease made or granted for the life or lives of one or more person or persons, or for any term of years either absolute, or determinable upon the death of one or more person or persons, or otherwise, such person, or his guardian, or other person, on his behalf, may apply to the High Court of Justice by petition or motion; and, by the order and direction of the said Court, such infant, or his guardian, or any person appointed in the place of such infant by the said Court, may be enabled from time to time, by deed, to surrender such lease, and accept and take, in the place, and for the benefit, of such person under the age of twenty-one years, a new lease of the premises comprised in such lease surrendered by virtue of this Act, for and during such number of lives, or for such term or terms of years determinable upon such number of lives, or for such term or terms of years absolute, as was, or were, mentioned or contained, in the lease so surrendered at the making thereof, or otherwise as the said Court shall direct. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 12.

Guardians of minors, in order to the surrender, and renewal, of leases, may apply to the High Court of Justice, and, by order, may surrender such leases, and renew the same.

5. Every sum of money, and other consideration, paid by a guardian, or other person, as a fine, premium, or income, or in the nature of a fine, premium, or income, for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the infant for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the said Court shall direct and determine. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 14.

Charges attending renewal to be charged on the estates as the Court shall direct.

6. Every lease to be renewed as aforesaid shall operate, and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devices, and conditions, as the lease surrendered as aforesaid, was or would have been subject to in case such surrender had not been made. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 15.

New leases shall be to the same uses.

Infants empowered to grant renewals of leases.

7. Where any person, being under the age of twenty-one years, might, in pursuance of any covenant or agreement, not under disability, be compelled to renew any lease made for the life or lives of one or more person or persons, or for any term or number of years absolute, or determinable on the death of one or more person or persons, such infant, or his guardian in the name of such infant, by the direction of the said High Court of Justice, to be signified by an order to be made upon the petition or motion of such infant, or his guardian, or of any person entitled to such renewal, from time to time, may accept of a surrender of such lease, and may make and execute a new lease of the premises comprised in such lease, for and during such number of lives, or for such term or terms determinable upon such number of lives, or for such term or terms of years absolute, as was or were mentioned in the lease so surrendered at the making thereof, or otherwise as the Court by such order shall direct. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 16.

High Court of Justice may authorize leases to be made of lands belonging to infants, when it is to the benefit of the estate.

8. Where any person, being an infant under the age of twenty-one years, is seized or possessed of, or entitled to, any land in fee, or in tail, or to any leasehold land for an absolute interest, and it shall appear to the High Court of Justice to be for the benefit of such person that a lease, or under-lease, should be made of such estate for term of years for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or the working of mines, or otherwise improving the same, or for farming or other purposes, such infant, or his guardian in the name of such infant, may by the direction of the High Court of Justice, to be signified by an order to be made upon the petition or motion of such infant, or his guardian, make such lease of the land of such person, or any part thereof, according to his interest therein, and to the nature of the tenure of such estate, for such term of years, and subject to such rents and covenants, as the said Court shall direct; but in no such case shall any fine or premium be taken, and in every such case the best rent, that can be obtained, regard being had to the nature of the lease, shall be reserved upon such lease; and the leases and covenants and provisions therein, shall be settled and approved of by the said Court, and a counterpart of every such lease shall be executed by the lessee therein to be named, and such counterparts shall be deposited for safe custody in the Court until such infant shall attain twenty-one, but with liberty to proper parties to have the use thereof, if required, in the meantime, for the purpose of enforcing any of the covenants therein contained: Provided that no lease be made of the capital mansion house and the park and grounds respectively held therewith, for any period exceeding the minority of any such infant. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 17.

(See R.S.O., c. 71.)



9. No renewed lease shall be executed by virtue of this Act, in pursuance of any covenant or agreement, unless the fine (if any), or such other sum or sums of money (if any), as ought to be paid on such renewal, and such things (if any) as ought to be performed in pursuance of such covenant or agreement by the lessee or tenant, be first paid, and performed, and counterparts of every renewed lease to be executed by virtue of this Act shall be duly executed by the lessee. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 20.

Fines to be paid before renewals, and counterparts, are executed.

10. All fines, premiums, and sums of money, which shall be had, received, or paid, for or on account of the renewal of any lease, by or on behalf of an infant, after a deduction of all necessary incidental charges and expenses, shall be paid to his guardian, and be applied and disposed of for the benefit of such infant, in such manner as the said Court shall direct. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 21.

Fines, how to be applied.

11. Every surrender, and lease, agreement, conveyance mortgage, or other disposition, respectively granted and accepted, executed and made, by virtue of this Act, shall be deemed to be as valid, and legal, to all intents and purposes, as if the person by whom, or in whose place, or on whose behalf, the same, respectively, shall be granted, accepted, executed and made, had been of full age, and had granted, accepted, made, and executed the same. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 31.

Surrender, and leases, deemed valid.

12. The High Court of Justice, by an order to be made on the petition of the guardian of any infant in whose name any stock, or any sum of money, by virtue of any statute for paying off any stock, shall be standing, and who shall be beneficially entitled thereto, or if there shall be no guardian, by an order to be made in any cause or matter depending in the said Court, may direct all or any part of the dividends due, or to become due, in respect of such stocks, or any such sum of money, to be paid to any guardian of such infant, or to any other person according to the discretion of such Court, for the maintenance and education, or otherwise for the benefit, of such infant; such guardian, or other person, to whom such payment shall be directed to be made, shall be named in the order directing such payment; and the receipt of such guardian, or other person, for such dividends, or sums of money, or any part thereof, shall be as effectual as if such infant had attained the age of twenty-one years, and had signed and given the same Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 32.

High Court of Justice may order dividends of stock belonging to infants to be applied for maintenance

13. The High Court of Justice may order the costs and expenses of, and relating to, the petitions, orders, directions, conveyances, and transfers, to be made in pursuance of this Act, or any of them, to be paid and raised out of, or from, the lands or stock, or the rents or dividends, in respect of which the

Costs may be directed to be paid.

the same respectively shall be made, in such manner as the said Court shall think proper. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 35.

Act to be an indemnity to Banks, etc.

14. This Act shall be and is hereby declared to be a full and complete indemnity and discharge to all banks, companies, and societies, and their officers and servants, for all acts and things done, or permitted to be done, pursuant thereto; and such acts and things shall not be questioned or impeached in any court to their prejudice or detriment. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 44.

#### SETTLEMENTS.

Infants may, with the approbation of the High Court of Justice, make valid settlements, or contracts for settlements, of their real and personal estate upon marriage.

15. Every infant, upon, or in contemplation of, his marriage, with the sanction of the High Court of Justice, may make a valid and binding settlement, or contract for a settlement, of all or any part of his property, or property over which he has any power of appointment, whether real or personal, and whether in possession, reversion, remainder, or expectancy; and every conveyance, appointment, and assignment, of such real or personal estate, or contract to make a conveyance, appointment, or assignment thereof, executed by such infant, with the approbation of the said Court, for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years; provided always, that this enactment shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant. Imp. Act 18 & 19 Vict. c. 43, s. 1.

In case any infant die under age, any appointment or disentailing deed executed under this Act shall be void.

16. In case any appointment under a power of appointment, or any disentailing assurance, shall have been executed by any infant tenant in tail under the provisions of section 15 of this Act, and such infant shall afterwards die under age, such appointment, or disentailing assurance shall thereupon become absolutely void. Imp. Act 18 & 19 Vict. c. 43, s. 2.

The sanction of the High Court of Justice to be given upon petition.

17. The sanction of the said Court to any such settlement, or contract for a settlement, may be given upon petition or motion by the infant, or his guardian, without the institution of an action, and if there is no guardian, the Court may require a guardian to be appointed or not, as it shall think fit, and the Court also may, if it shall think fit, require that any persons interested or appearing to be interested in the property shall be served with notice. Imp. Act 18 & 19 Vict. c. 43, s. 3.

Ss. 15-17 not to apply to males under 20, or females under 17 years of age.

18. Nothing in sections 15, 16 and 17 of this Act shall apply to any male infant under the age of twenty years, or to any female infant under the age of seventeen years. Imp. Act 18 & 19 Vict. c. 43, s. 4.

#### CHAPTER

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## 2. LUNATICS.

### CHAPTER 341.

#### An Act respecting Lunatics (2).

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. The King shall have the custody of the lands of natural fools, taking the profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the lands be holden; and, after the death of such idiots, he shall render the same to the right heirs, so that such idiots shall not alien, nor their heirs be disinherited. (Statute of uncertain date, c. 11. Imp. Rev. St. 1870, p. 132.)

The custody of lands of idiots.

2. Also the King shall provide, when any, that beforetime hath had his wit and memory, happen to fail of his wit, as there are many, *per lucida intervalla*, that their lands and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently with the profits of the same, and the residue besides their sustentation shall be kept to their use, to be delivered unto them when they come to right mind, so that such lands and tenements shall in no wise be aliened; and the King shall take nothing to his own use. (Statute of uncertain date, c. 12. Imp. Rev. St. 1870, p. 132.)

Of lands of lunatics.

#### MARRIAGE OF LUNATICS, WHEN VOID.

3. In case any person who now is, or at any time hereafter shall be, declared to be a lunatic, or any lunatic, or person under a phrenzy, whose person and estate, by virtue of any Act, now are, or hereafter shall be, committed to the care and custody of particular trustees, shall marry before he shall be declared of sane mind by the order of the High Court of Justice, or such trustees as aforesaid or the major part of them respectively, every such marriage shall be and is hereby declared to be null and void to all intents and purposes whatsoever. 15 Geo. 2, c. 30.

Lunatics not to marry till declared of sane mind by the High Court of Justice, or committee.

#### LEASES, ETC.

4. Where any person, being lunatic, is entitled to any lease made or granted for the life or lives of one or more person or persons

Committees of lunatics may with persons

sanction of Court surrender leases, and renew the same, etc.

persons, or for any term of years, either absolute or determinable upon the death of one or more person or persons, or otherwise, the committee of the estate of such person may apply to the High Court of Justice by petition or motion, and, by the order and direction of the said Court, such committee may be enabled from time to time, by deed, in the place of such lunatic, to surrender such lease and accept and take, in the name, and for the benefit, of such lunatic, a new lease of the premises comprised in such lease surrendered by virtue of this Act, for and during such number of lives, or for such term of years, absolute or determinable as aforesaid, as was mentioned or contained in the lease so surrendered at the making thereof, or otherwise as the said Court shall direct. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 13.

Charges attending renewal to be charged on the estates as the Court shall direct.

5. Every sum of money, and other consideration, paid by a committee, or other person, as a fine, premium, or income, or in the nature of a fine, premium, or income, for the renewal of any such lease, and all reasonable charges incident thereto, shall be paid out of the estate or effects of the lunatic for whose benefit the lease shall be renewed, or shall be a charge upon the leasehold premises, together with interest for the same, as the said Court shall direct and determine. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 14.

New leases shall be to the same uses.

6. Every lease to be renewed as aforesaid shall operate and be to the same uses, and be liable to the same trusts, charges, incumbrances, dispositions, devices, and conditions, as the lease surrendered as aforesaid was, or would have been, subject to, in case such surrender had not been made. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 15.

Committees of lunatics, by the direction of the High Court, may accept of surrenders, and make new leases.

7. Where any person, being lunatic, is, or shall be, entitled, or has a right, or, in pursuance of any covenant or agreement, might, if not under disability, be compelled, to renew any lease made or to be made for the life or lives of one or more person or persons, or for any term or number of years absolute, or determinable on the death of one or more person or persons, or otherwise, the committee of the estate of such lunatic, in the name of such lunatic, may, by the direction of the High Court of Justice, to be signified by an order to be made in a summary way upon the petition of such committee, or of any person entitled to such renewal, accept of a surrender of such lease, and make and execute to any person a new lease of the premises comprised in such lease to be surrendered by virtue of this Act, for and during such number of lives, or for such term of years determinable upon such number of lives, or for such term of years absolute, as were mentioned or contained in such lease so surrendered at the making thereof, or otherwise as the said Court by such order shall direct; and this provision shall extend as well to cases where the lunatic shall

not

not be compellable to renew, but it shall be for his benefit to do so, as to cases where a renewal might be effectually enforced against the lunatic if of sound mind. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 19.

8. No renewed lease shall be executed by virtue of this Act, in pursuance of any covenant or agreement, unless the fine (if any), or such other sum or sums of money (if any), as ought to be paid on such renewal, and such things (if any) as ought to be performed in pursuance of such covenant or agreement by the lessee or tenant, be first paid, and performed, and counterparts of every renewed lease to be executed by virtue of this Act shall be duly executed by the lessee. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 20.

Fines to be paid before renewals, and counterparts are executed.

9. All fines, premiums, and sums of money, which shall be had, received, or paid, for, or on account of, the renewal of any lease in the name of a lunatic, after a deduction of all necessary incidental charges and expenses, shall be paid to the committee of the estate of such lunatic, and be applied and disposed of for the benefit of such lunatic, in such manner as the said Court shall direct; but upon the death of such lunatic, all such sum of money as shall arise by such fines or premiums, or so much thereof as shall remain unapplied for the benefit of such lunatic at his death, shall, as between the representatives of the real and personal estates of such lunatic, be considered as real estate, unless such lunatic shall be a tenant for life only, and then the same shall be considered as personal estate. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 21.

Fines, how to be applied.

On death of lunatic money arising by such fines to be considered real estate

unless lunatic was tenant for life.

10. Where any person, being a lunatic, is seized, or possessed, of any land, either for life, or for some other estate, with power of granting leases, and taking fines, reserving small rents on such leases for one, two, or three, lives, in possession or reversion, or for some number of years determinable upon lives, or for any term of years absolutely, such power of leasing which is, or shall be, vested in such person, being lunatic and having a limited estate only, shall and may be executed by the committee of the estate of such person, under the direction and order of the High Court of Justice. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 23.

The power of leasing lands, etc of lunatics having a limited estate may be executed by the committee.

11. Where any person, being lunatic, is seized, or possessed, of, or entitled to, any land in fee, or in tail, or to any leasehold land for an absolute interest, and it shall appear to the High Court of Justice to be for the benefit of such person that a lease or under lease should be made of such estates for terms of years, for encouraging the erection of buildings thereon, or for repairing buildings actually being thereon, or otherwise improving the same, or for farming or other

Where lunatics are seized of estates in fee, or in tail, or have an absolute interest in leasehold estates, the High Court may direct

leases to be made.

other purposes, the High Court of Justice may order and direct the committee of the estate of such lunatic to make such lease of the land of such person, or any part thereof, according to his interest therein, and to the nature of the tenure of such estate, for such term of years, and subject to such rents and covenants, as the said Court shall direct. Imp. Act 11 Geo. 4, & 1 W. 4 c. 65, s. 24.

Act shall not subject estates of lunatics to debts, otherwise than they are now subject.

12. Nothing in the Act contained shall extend to subject any part of the estates of any person, being lunatic, to the debts or demands of his creditors, otherwise than as the same are now subject and liable by due course of law, but only to authorize the High Court of Justice to make order in such cases as are hereinbefore mentioned, when the same shall be deemed just and reasonable, or for the benefit or advantage of such lunatic. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 30.

Surrender, and leases deemed valid.

13. Every surrender, and lease, agreement, conveyance, mortgage, or other disposition, respectively granted and accepted, executed, and made, by virtue of this Act, shall be and be deemed as valid and legal to all intents and purposes as if the person by whom, or in whose place, or on whose behalf, the same respectively shall be granted, or accepted, executed, and made, had been of sane mind, and had granted, accepted, made, and executed the same. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 31.

#### STOCKS BELONGING TO LUNATICS.

Stocks belonging to lunatics may be ordered by the High Court to be transferred.

14. Where any stock shall be standing in the name of, or shall be vested in, any person being lunatic, who shall be beneficially entitled thereto, or shall be standing in the name of, or vested in any person being committee of the estate of a person found lunatic, in trust for him, or as part of his property, and such committee shall have died intestate, or shall himself become lunatic, or shall be out of Ontario, or not amenable to the process of the High Court of Justice, or it shall be uncertain whether such committee be living or dead, or such committee shall neglect or refuse to transfer such stock, and to receive and pay over the dividends thereof to a new committee, or as he shall direct, for the space of fourteen days next after a request in writing for that purpose shall have been made by any new committee, then and in every or any such case, it shall be lawful for the High Court of Justice, upon the petition of the committee of the estate of the person being lunatic, or of the person reported by the officer to whom the matter is referred as a proper person to be such committee, although such report shall not have been confirmed, to direct such person as the Court shall think proper to appoint for that purpose to transfer such stock to, or into the name of, any new committee, or into the name of the

Accountant,

Accountant of the Supreme Court of Judicature for Ontario, or otherwise, and also to receive and pay over the dividends thereof, or such sum or sums of money, in such manner as such Court shall think proper, and such transfers and payments shall be valid and effectual to all intents and purposes whatsoever. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 33.

15. Where any stock shall be standing in the name of, or vested in, any person residing out of Ontario, it shall be lawful for the High Court of Justice, upon petition, and proof being made to it that such person has been declared lunatic, and that his personal estate has been vested in a curator or other person appointed for the management thereof, according to the laws of the place where such person shall reside, to direct any person whom such Court shall think proper to appoint for that purpose to transfer such stock, or any part, or parts thereof, into the name of any such curator, or other such person as aforesaid, or otherwise, and also to receive and pay over the dividends thereof, as such Court shall think fit; and such transfer and payment shall be valid and effectual to all intents and purposes whatsoever. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 34.

Where stock shall be standing in the names of lunatics residing out of Ontario, the High Court may direct the transfer.

16. The High Court of Justice may order the costs and expenses of, and relating to, the petitions, orders, directions, conveyances, and transfers, to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the lands or stock, or the rents or dividends, in respect of which the same respectively shall be made, in such manner as the said Court shall think proper. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 35.

Costs may be directed to be paid.

17. This Act shall be, and is hereby declared to be, a full and complete indemnity and discharge to all banks, companies, and societies, and their officers and servants, for all acts and things done, or permitted to be done, pursuant thereto; and such acts and things shall not be questioned or impeached in any court to their prejudice or detriment. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 44.

Act to be an indemnity to banks.

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3. LANDLORD AND TENANT.

CHAPTER 342.

An Act respecting Landlord and Tenant (2).

**DISTRESS.**

For rent seck, s. 1.  
 On lease determined, s. 2.  
 Husband may recover rent due in right of deceased wife, s. 3.  
 Proviso in case of person entitled for life of another, s. 4.  
 To be reasonable s. 5.  
 Property liable to, ss. 6, 7.  
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**RENT, SHERIFF TO PAY, WHEN GOODS SEIZED IN EXECUTION, s. 19.**

**OVERHOLDING TENANTS, ss. 20, 21.**

**WASTE BY TENANT, s. 22.**

**ATTORNEY**

To stranger to title void, s. 23.

Unnecessary, on grant of reversion, s. 24.

**RENEWALS OF LEASES.**

Chief lease may be renewed without surrender of under-leases, s. 25.

Where lessor absent, ss. 26-9.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:—

Rents seck may be distrained for.

1. Every person may have the like remedy by distress, and by impounding and selling the same in cases of rents seck, as in case of rent reserved upon lease, any law or usage to the contrary notwithstanding. 4 Geo. 2, c. 28, s. 5.

Distress for arrears on leases determined.

2. Any person having any rent in arrear, or due, upon any lease for life or lives or for years, or at will, ended or determined, may distrain for such arrears, after the determination of the said lease, in the same manner as he might have done if such lease had not been ended or determined: Provided that such distress be made within the space of six months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due. 8 Anne. c. 18, (or c. 14 in Ruff head's Ed.), ss. 6, 7.

Limitation of such distress.



3. If any man hath, or shall have, in the right of his wife, any estate in fee simple, fee tail, or for term of life, of or in any rents, or fee farms, and the same rents, or fee farms, shall be due behind and unpaid in the said wife's life, then the said husband, after the death of his said wife, his executors and administrators, shall have an action for the said arrearages against the tenant of the demesne that ought to have paid the same, his executors, or administrators, and also the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and form as he might have done if his said wife had been then living, and make avowry upon his said matter as is aforesaid. 32 Hen. 8, c. 37, s. 3.

Husband may recover rent due in right of his wife deceased.

(See R. S. O. c. 127, ss. 4 (3), 5, and c. 163, ss. 5, 6, 7.)

4. Where a person is entitled to any rent or land for the life of another he may sue for, distrain, and recover by action, or distress, the rent due and owing at the time of the death of the person for whose life such rent or land did depend, as he might or could have done if such person by whose death the estate in such rent or land determined had continued in life. 32 Hen. 8, c. 37, s. 4.

Persons entitled to rent during life of another may recover same after death of cestui que vie.

5. Distresses whether for a debt due to the King, or to any other person, shall be reasonable, and not too great. 52 Hen. 3 (St. of Marlbridge,) c. 4 part; Statute of uncertain date, (Imp. Rev. St., 1870, p. 126.)

Distresses to be reasonable.

PROPERTY LIABLE TO DISTRESS.

6. Any person having rent arrear and due upon any demise lease, or contract, may seize and secure any sheaves or cocks of corn, or corn loose, or in the straw, or hay, lying or being in any barn or granary or upon any hovel, stack or rick; or otherwise upon any part of the land, or ground, charged with such rent, and may lock up, or detain the same, in the place where the same shall be found, for or in the nature of a distress until the same shall be replevied; and, in default of the same being replevied, may sell the same, after appraisment thereof to be made, so as nevertheless such corn, grain, or hay, so distrained as aforesaid, be not removed by the person distraining, to the damage of the owner thereof, out of the place where the same shall be found and seized, but be kept there (as impounded) until the same shall be replevied, or sold in default of replevying the same. 2 W. & M. Sess. 1, c. 5, s. 2.

Sheaves, and cocks of corn loose, etc. hay in barn, etc., may be distrained.

Corn, etc., not to be removed by person distraining, to the damage of owner, from the place where raised.

7. Every lessor or landlord, or person empowered by him, may take and seize as a distress for arrears of rent, any cattle or stock of his tenant feeding or depasturing upon any common appendant, or appurtenant, or any ways belonging, to all,

Cattle on ways belonging to demised premises, and growing crops thereon may be distrained.

or any part of, the premises demised, or holden; and may take and seize all sorts of corn, and grass, hops, roots, fruits, pulse, or other product whatsoever, which shall be growing on any part of the estate demised, or holden, as a distress for arrears of rent; and the same cut, gather, make, cure, carry and lay up, when ripe, in the barns, or other proper place, on the premises so demised, or holden; and in case there shall be no barn, or proper place, on the premises so demised, or holden, then, in any other barn, or proper place, which such lessor or landlord shall hire, or otherwise procure, for that purpose, and as near as may be to the premises, and in convenient time to appraise, sell, or otherwise dispose of the same, towards satisfaction for the rent for which such distress shall have been taken, and of the charges of such distress, appraisement, and sale, in the same manner as other goods and chattels may be seized, distrained, and disposed of; and the appraisement thereof shall be taken when cut, gathered, cured and made, and not before. 11 Geo. 2, c. 19, s. 8.

Tenants to have notice of the place where the distress is lodged.

8.—(1) Notice of the place where the goods and chattels so distrained shall be lodged or deposited shall, within the space of one week after the lodging or depositing thereof in such place, be given to such lessee or tenant, or left at his last place of abode.

Distress of growing crops may be satisfied by payment, before crops cut.

(2) If after any distress for arrears of rent so taken of corn, grass, hops, roots, fruits, pulse, or other product, which shall be growing as aforesaid, and at any time before the same shall be ripe and cut, cured, or gathered, the tenant or lessee, his executors, administrators, or assigns, shall pay, or cause to be paid, to the lessor or landlord for whom such distress shall be taken, the whole rent which shall be then in arrear, with the full costs and charges of making such distress, and which shall have been occasioned thereby, then, upon such payment, or lawful tender, thereof actually made, whereby the end of such distress will be fully answered, the same, and every part thereof shall cease, and the corn, grass, hops, roots, fruits, pulse, or other product, so distrained shall be delivered up to the lessee or tenant, or his executors, administrators, or assigns; any thing hereinbefore contained to the contrary notwithstanding. 11 Geo. 2, c. 19, s. 9.

#### PROPERTY CONDITIONALLY EXEMPT FROM DISTRESS.

Horses and cattle not to be distrained if other sufficient distress.

9. Beasts that gain the land, and sheep, shall not be distrained for the King's debt, nor for the debt of any other man, nor for any other cause, if there be other chattels sufficient to satisfy the debt, or demand: but this provision is not to affect the right to impound beasts which a man findeth in his ground damage feasant. (Stat. of Exchequer, of uncertain date, sometimes styled 51 Hen. 3, St. 4; Imp. Rev. St. 1870, p. 126).

WHERE

WHERE DISTRESS MAY BE TAKEN.

10. Save as provided by section 7 and as hereinafter provided, chattels shall not be distrained for rent which are not at the time of the distress upon the premises in respect of which the rent distrained for is due. 52 Hen. 3, (St. of Marlbridge) c. 15.

Chattels not to be distrained off the premises.

11.—(1) In case any tenant, or lessee for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise, or holding whereof, any rent is reserved, due, or made payable, shall fraudulently, or clandestinely, convey away, or carry off, or from, such premises, his goods or chattels, to prevent the landlord or lessor from distraining the same for arrears of rent so reserved, due, or made payable, the landlord or lessor, or any person by him, for that purpose, lawfully impowered, may, within the space of thirty days next ensuing such conveying away, or carrying off such goods or chattels as aforesaid, take and seize such goods and chattels wherever the same shall be found, as a distress for the said arrears of rent, and the same sell, or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by the lessor or landlord in and upon such premises for such arrears of rent; any law, custom, or usage to the contrary, notwithstanding. 11 Geo. 2, c. 19. s. 1.

Landlords may distrain goods fraudulently carried off the premises.

(2). No landlord or lessor, or other person entitled to such arrears of rent, shall take, or seize, any such goods or chattels as a distress for the same which shall be sold *bona fide* and for a valuable consideration, before such seizure made, to any person not privy to such fraud as aforesaid; any thing herein contained to the contrary notwithstanding. 11 Geo. 2, c. 19, s. 2.

But not goods bona fide sold for value.

12. Where any goods or chattels fraudulently or clandestinely conveyed, or carried away, by any tenant or lessee, his servant or agent, or other person aiding or assisting therein, shall be put, placed, or kept, in any house, barn, stable, out-house, yard, close, or place, locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, the landlord, or lessor, or his agent, may take and seize, as a distress for rent, such goods and chattels (first calling to his assistance the constable, or other peace-officer, of the place where the same shall be suspected to be concealed, who is hereby required to aid and assist therein; and in case of a dwelling house, oath being also first made before a justice of the peace of a reasonable ground to suspect that such goods or chattels are therein), and in the day time break open and enter into such house, barn, stable, out-house, yard, close, and place, and take and seize

Landlords may break open houses to seize goods fraudulently secured therein.

such

such goods and chattels for the said arrears of rent, as he might have done if such goods and chattels had been put in any open field or place upon the premises from which the same have been so conveyed, or carried away. 11 Geo. 2, c. 19, s. 7.

Penalty for fraudulently removing, or assisting to remove, goods.

13.—(1) If a tenant or lessee shall fraudulently remove and convey away his goods or chattels as aforesaid, or if any person shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away, or carrying off, of any part of his goods or chattels, or in concealing the same, every person so offending shall forfeit and pay to the landlord or lessor, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him carried off or concealed as aforesaid, to be recovered by action in any court of competent jurisdiction. 11 Geo. 2, c. 19, s. 3.

If the goods removed do not exceed \$200 in value complaint may be made to J.J.P.

(2) Where the goods and chattels so fraudulently carried off, or concealed, shall not exceed the value of \$200, the landlord from whose estate such goods or chattels were removed, or his agent, may exhibit a complaint in writing against such offender before two or more justices of the peace of the same county, residing near the place whence such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed, who may summon the offender, examine the fact, and all proper witnesses upon oath, and in a summary way determine whether such offender be guilty of the offence with which he is charged, and inquire in like manner of the value of the goods and chattels by him so fraudulently carried off, or concealed, as aforesaid; and upon full proof of the offence, by order under their hands and seals, the said justices of the peace may and shall adjudge the offender to pay double the value of the said goods and chattels to the landlord at such time as the said justices shall appoint, and in case the offender, having notice of such order, shall refuse or neglect so to do, may and shall, by warrant under their hands and seals, levy the same by distress and sale of the goods and chattels of the offender; and for want of such distress, may commit the offender to the common gaol, there to be kept to hard labour, without bail or mainprize, for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied. 11 Geo. 2, c. 19, s. 4.

Appeal.

Rev. Stat. c. 90.

(3) Any person aggrieved by such order may appeal to the General Sessions in accordance with the provisions of *The Ontario Summary Convictions Act*. 11 Geo. 2, c. 19, s. 5.

Execution of order to be stayed if security given.

(4) Where the party appealing shall enter into a recognizance with one or two sufficient surety or sureties in double the sum so ordered to be paid, with condition to appear at such General Sessions and to abide the order there to be made,

the

the order of the said justices shall not be executed against him in the meantime. 11 Geo. 2, c. 19, s. 6.

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**IMPOUNDING DISTRESS.**

14. Beasts or cattle distrained shall not be chased or driven out of the local municipality (as defined by *The Municipal Act*) in which they are distrained, except it be to a pound overt within the same county not above three miles distant from the place where the distress is taken. 3 Ed. 1, (St. of Westminster Prim.), c. 16, and 1 P. & M. c. 12, s. 1, part.

Beasts distrained not to be driven out of the municipality as defined by Rev. Stat. c. 223.

(2) No cattle, or other goods, distrained or taken by way of distress for any manner of cause at one time, shall be impounded in several places, whereby the owner of such distress shall be constrained to sue several replevins for the delivery of the said distress so taken at one time; upon pain that every person offending shall forfeit to the party aggrieved \$20, and treble damage. 1 P. & M. c. 12, s 1, part.

Chattels distrained at the same time not to be impounded in different places.

(As to sheaves and cocks of corn, or corn loose, or in the straw, or hay, see ante, s. 6, and as to growing crops, see s. 7.)

(3) Any person lawfully taking any distress for any kind of rent may impound or otherwise secure the distress so made, of what nature or kind soever it may be, in such place, or on such part of the premises chargeable with the rent, as shall be most fit and convenient for the impounding and securing such distress, and may appraise, sell, and dispose of, the same upon the premises, in like manner, and under like directions and restraints to all intents and purposes, as any person taking a distress for rent may now do off the premises, and it shall be lawful for any person whomsoever to come and go to, and from, such place, or part of the said premises, where any distress for rent shall be impounded and secured as aforesaid, in order to view, appraise, and buy, and also in order to carry off or remove the same on account of the purchaser thereof, and if any pound-breach, or rescue, shall be made of any goods and chattels, or stock, distrained for rent, and impounded or otherwise secured by virtue of this Act, the person aggrieved thereby shall have the like remedy as in cases of pound-breach, or rescue. 11 Geo. 2, c. 19, s 10.

Goods distrained may be impounded on demised premises.

**POUND BREACH, OR RESCUE.**

15. Upon any pound breach, or rescue, of goods or chattels distrained for rent, the person grieved thereby shall, by action for the wrong thereby sustained, recover treble damages and costs of suit against the offender in any such rescue, or pound breach, or against the owner of the goods distrained, in case the same be afterwards found to have come to his use or possession. 2 W. & M. Sess. 1, c. 5. s. 3.

Pound breach or rescue, damages for.

SALE

## SALE OF GOODS DISTRAINED.

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Sale of distress,

not till expiration of five days, and appraisalment.

**16.** Where any goods or chattels shall be distrained for any rent reserved and due upon any demise, lease, or contract whatsoever, and the tenant, or owner of the goods so distrained, shall not, within five days next after such distress taken and notice thereof (with the cause of such taking) left at the dwelling house, or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient security to be given to the sheriff according to law, then, in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining shall cause the goods and chattels so distrained to be appraised by two appraisers, who shall first be sworn before a justice of the peace, or any other officer or person authorized to administer an oath, to appraise the same truly, according to the best of their understandings (a memorandum of which oath is to be indorsed on the inventory), and, after such appraisalment, the person so distraining may lawfully sell the goods and chattels so distrained for the best price which can be got for the same, towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisalment, and sale, and shall hold the overplus (if any) for the owner's use, and pay the same over to him on demand. (*See 2 W. & M. Sess. 1, c. 5, s. 1.*) 2 Ed. 7, c. 1, s. 22.

## WRONGFUL, OR IRREGULAR, DISTRESS.

Irregularities not to make distress void *ab initio*.

**17.** Where any distress shall be made for any kind of rent justly due, and any irregularity, or unlawful act, shall afterwards be done by the party distraining, or by his agent, or if there has been an omission to make the appraisalment under oath, the distress itself shall not be therefore deemed to be unlawful, nor the party making it be deemed a trespasser *ab initio*, but the party aggrieved by such unlawful act, or irregularity, may recover by action full satisfaction for the special damage sustained thereby. 11 Geo. 2, c. 19, s. 19.

Tender of amends, effect of.

(2) A tenant or lessee shall not recover in any action for any such unlawful act, or irregularity as aforesaid, if tender of amends hath been made before action. 11 Geo. 2, c. 19, s. 20.

Wrongful distress, damages for.

Rev. Stat. c. 223.

**18.** A distrainer who takes an excessive distress, or takes a distress wrongfully, or wrongfully drives a distress out of the local municipality (as defined by *The Municipal Act*) in which the same was taken, shall be liable in damages to the owner of the chattels distrained. 52 Hen. 3, (St. of Marlbridge) c. 4 in part; and 3 Ed. 1, (St. of Westminster Prim.) c. 16.

(2)

(2) In case any distress and sale shall be made for rent pretended to be in arrear and due; when, in truth, no rent is arrear or due to the person distraining, or to him in whose name or right such distress shall be taken, the owner of such goods or chattels distrained and sold, his executors, or administrators, may, by action to be brought against the person so distraining, recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit. 2 W. & M. Sess. 1, c. 5, s. 4.

Where no rent due.

#### GOODS TAKEN IN EXECUTION NOT TO BE REMOVED WITHOUT PAYMENT OF RENT.

19. No goods or chattels whatsoever lying or being in or upon any messuage, lands, or tenements, leased for life or lives, or term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution issued out of the High Court of Justice, or a County Court, on any pretence whatsoever, unless the party at whose suit the execution is sued out shall, before the removal of such goods or chattels from off the said premises by virtue of such execution, pay to the landlord of the said premises, or his bailiff, all such sums of money as are due for rent of the premises at the time of the taking of such goods or chattels by virtue of such execution: Provided the said arrears of rent do not amount to more than one year's rent, and in case the said arrears shall exceed one year's rent then the party at whose suit such execution is sued out, paying the said landlord, or his bailiff, one year's rent, may proceed to execute his judgment as he might have done before the making of this Act, and the sheriff, or other officer, is hereby empowered and required to levy and pay to the execution creditor as well the money so paid for rent as the execution money. 8 Anne, c. 18, (or c. 14 in Ruffhead's Ed.) s. 1.

Goods taken in execution not to be removed till rent paid.

#### OVERHOLDING TENANTS.

20. In case any tenant for any term for life, lives, or years, or other person who shall come into possession of any lands, tenements, or hereditaments, by from, or under, or by collusion with, such tenant, shall wilfully hold over any lands, tenements, or hereditaments, after the determination of such term or terms, and after demand made and notice in writing given for delivering the possession thereof by his landlord or lessor, or the person to whom the remainder or reversion of such lands, tenements, or hereditaments shall belong, or his agent thereunto lawfully authorized, then, and in such case, such person so holding over shall, for and during the time he shall so hold over or keep the person entitled out of possession of the said lands, tenements, and hereditaments, as aforesaid, pay to the person so kept out of possession, or his assigns, at the rate of double the yearly value of the lands, tenements, and hereditaments, so detained

Overholding tenant to pay double value.

detained, for so long time as the same are detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which said penalty there shall be no relief in equity. 4 Geo. 2, c. 28, s. 1.

Tenants over-  
holding, after  
giving notice  
to quit, liable  
for double  
rent.

21. In case any tenant shall give notice of his intention to quit the premises by him holden at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained, the said tenant, his executors, or administrators, shall from thenceforward pay to the landlord or lessor double the rent or sum which he should otherwise have paid, to be levied, sued for, and recovered, at the same times and in the same manner as the single rent or sum, before the giving such notice, could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid during all the time such tenant shall continue in possession as aforesaid. 11 Geo. 2, c. 19, s. 18.

#### WASTE.

Waste  
by tenants.

22. Lessees making or suffering waste on the demised premises, without the licence of the lessors, shall be liable for the full damage so occasioned. 52 Hen. 3, (St. of Marlbridge) c. 23.

(See R.S.O. c. 330, ss. 21-23.)

#### ATTORNMENT.

Attornment to  
stranger to  
title void.

23. Every attornment of any tenant of any messuages, lands tenements, or hereditaments, within Ontario, to any stranger claiming title to the estate of his landlord, shall be absolutely null and void to all intents and purposes whatsoever; and the possession of his landlord or lessor shall not be deemed, or construed to be, anywise changed, altered, or affected, by any such attornment; provided always, that nothing herein contained shall extend to vacate, or affect, any attornment made pursuant to, and in consequence of, some judgment or order of a court, or made with the privity and consent of the landlord or lessor, or to any mortgagee, after the mortgage is become forfeited. 11 Geo. 2, c. 19, s. 11.

Attornment of  
tenant, in what  
cases not  
necessary.

24.—(1) All grants or conveyances of any rents, or of the reversion, or remainder, of any messuages or lands, shall be good and effectual to all intents and purposes without any attornment of the tenant of the land out of which such rent shall be issuing, or of the particular tenant upon whose particular estate any such reversion, or remainder, shall and may be expectant, or depending, as if his attornment had been had, and made. 4 & 5 Anne, c. 3 (or c. 16 in Ruffhead's Ed.), s. 9.

Tenant not to  
be prejudiced.

(2) No tenant shall be prejudiced, or damaged, by payment of any rent to any grantor, or conusor, or by breach of any condition



condition for non-payment of rent, before notice shall be given to him of such grant by the conusee, or grantee. 4 & 5 Anne, c. 3, (or c. 16 in Ruffhead's Ed.), s. 10.

**RENEWALS.—CHIEF LEASE MAY BE RENEWED WITHOUT SURRENDER OF UNDER-LEASE.**

25. In case any lease shall be duly surrendered in order to be renewed, and a new lease made and executed by the chief landlord, the same new lease shall, without a surrender of all or any of the under-leases, be as good and valid to all intents and purposes as if all the under-leases derived thereout had been likewise surrendered, at or before the time of taking of such new lease; and every person in whom any estate for life, or lives, or for years, shall from time to time be vested by virtue of such new lease shall be entitled to the rents, covenants, and duties, and have like remedy for recovery thereof, and the under-lessees shall hold and enjoy the messuages, lands, and tenements in the respective under-leases comprised, as if the original leases, out of which the respective under-leases are derived, had been still kept on foot and continued, and the chief landlord shall have, and be entitled to, such and the same remedy by distress, or entry, in and upon the messuages, lands, tenements, and hereditaments, comprised in any such under-lease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease out of which such under-lease was derived, as they would have had in case such former lease had been still continued, or as they would have had in case the respective under-leases had been renewed under such new principal lease, any law, custom, or usage to the contrary hereof notwithstanding. 4 Geo. 2, c. 28, s. 6.

Chief leases may be renewed without surrendering all the under-leases.

(See *R.S.O. c. 170, s. 10.*)

**RENEWAL OF LEASES BY ABSENTEES.**

26. Where any person who, in pursuance of any covenant or agreement in writing, might, if within Ontario and amenable to the process of the High Court of Justice, be compelled to execute any lease by way of renewal, shall not be within Ontario, or not amenable to the process of the said Court, it shall be lawful for the said High Court of Justice by an order to be made upon the petition or motion of any person entitled to such renewal, (whether such person be, or be not, under any disability), to direct such person as the said Court shall think proper to appoint for that purpose to accept a surrender of the subsisting lease, and make and execute a new lease in the name of the person who ought to have renewed the same; and such deed executed by the person to be appointed as aforesaid, shall be as valid as if the person in whose name the same shall be made had executed the same,

If persons bound to renew are out of Ontario, the renewals may be made by a person appointed by the Court in the name of the person who ought to have renewed.

and

and had been alive, and not under any disability, and had himself executed the same; but in every such case it shall be in the discretion of the said Court, if under the circumstances it shall seem requisite, to direct an action to be brought to establish the right of the party seeking the renewal, and not to make the order for such new lease unless by the judgment to be made in such cause, or until after such judgment shall have been made. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 18.

Fines to be paid before renewals and counterparts are executed.

**27.** No renewed lease shall be executed by virtue of section 26, in pursuance of any covenant or agreement, unless the fine (if any), or the sum or sums of money (if any), which ought to be paid on such renewal, and the things (if any) which ought to be performed in pursuance of such covenant or agreement by the lessee or tenant, be first paid, and performed, and counterparts of every renewed lease to be executed by virtue of this Act shall be duly executed by the lessee. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 20.

Premiums how to be paid.

**28.** All fines, premiums, and sums of money, which shall be had, received, or paid, for, or on account of, the renewal of any lease, by any person out of Ontario, or not amenable as aforesaid, after a deduction of all necessary incidental charges and expenses, shall be paid, to such person, or in such manner, or into the High Court of Justice to such account, and be applied, and disposed of, as the said Court shall direct. Imp. Act, 11 Geo. 4, & 1 W. 4, c. 65, s. 21.

Costs may be directed to be paid.

**29.** The High Court of Justice may order the costs and expenses of, and relating to, the petitions, orders, directions, conveyances, and transfers, to be made in pursuance of section 26, or any of them, to be paid and raised out of, or from, the lands, or the rents, in respect of which the same respectively shall be made, in such manner as the said Court shall think proper. Imp. Act 11 Geo. 4, & 1 W. 4, c. 65, s. 35.

## SCHEDULE A.

—

Shewing Imperial Acts, and parts of Imperial Acts, relating to property and civil rights appearing to be in force in Ontario at the end of the year 1897, by virtue of Provincial Legislation, which have been revised, consolidated, and (if, and so far as they were in force in the Province of Ontario, and within the legislative authority of the Province) repealed from the day upon which the Consolidated Statutes comprised in volume 3 of the Revised Statutes of Ontario, 1897, take effect, including Acts repealed by the Mortmain & Charitable Uses Act, 1902, and the Statute Law Revision Act, 1902.

Chapter.	TITLE OF ACT.	EXTENT OF REPEAL.
1	20 Hen. 3 (St. of Merton).	The whole chapter.
2		The whole chapter.
9		The whole chapter.
	51 Hen. 3, Statute 4.	The whole Statute.
1	52 Hen. 3 (St. of Marlbridge).	The whole chapter.
4		The whole chapter.
15		The whole chapter.
23		The whole chapter.
16	3 Ed. 1 (St. o Westminster Prim.).	The whole chapter.
25		(S. L. R. 1902). The whole chapter.
26		(S. L. R. 1902). The whole chapter.
27		(S. L. R. 1902). The whole chapter.
28		(S. L. R. 1902). The whole chapter.
29		(S. L. R. 1902). The whole chapter.
5	6 Ed. 1 (St. of Gloucester).	The whole chapter.
	7 Ed. 1 (Mortmain & Char. Uses Act).	The whole Statute.
1	13 Ed. 1 (St. of Westminster Sec.).	The whole chapter.
22		The whole chapter.
23		The whole chapter.
32	(Mortmain & Char. Uses Act).	The whole chapter.
34		The whole chapter.
37		(S. L. R. 1902). The whole chapter.
1	18 Ed. 1 ( <i>Quia Emptores</i> ).	The whole chapter.
2		The whole chapter.
3		The whole chapter.
7	25 Ed. 1 ( <i>Magna Carta</i> ).	The whole chapter.
8		(S. L. R. 1902). The whole chapter.
10		(S. L. R. 1902). The whole chapter.
14		(S. L. R. 1902). The whole chapter.
18		(S. L. R. 1902). The whole chapter.
29		(S. L. R. 1902). The whole chapter.

Chapter.	TITLE OF ACT.	EXTENT OF REPEAL.
30	25 Ed. 1 ( <i>Magna Carta</i> ).	(S. L. R. 1902). The whole chapter.
37		(S. L. R. 1902). The whole chapter.
	33 Ed. 1 ( <i>Ordin. de Consp.</i> ) (St. 2 in Ruffhead's Ed.).	The whole Statute.
	Statute of uncertain date.—Imp. Rev. St. (1870), p. 125.	
	(S. L. R. 1902.)	The whole Statute.
	Statute of uncertain date.—Imp. Rev. St. (1870), p. 126.	The whole Statute.
	Statute of uncertain date.—Imp. Rev. St. (1870), p. 129.	The whole Statute.
	Statute of uncertain date.—Imp. Rev. St. (1870), p. 132.	The whole Statute.
11		The whole chapter.
12		The whole chapter.
14	1 Ed. 3, St. 2.	(S. L. R. 1902). The whole chapter.
7	4 Ed. 3.	(S. L. R. 1902). The whole chapter.
9	5 Ed. 3.	The whole chapter.
3	18 Ed. 3, St. 3.	(Mortmain & Char. Uses Act). The whole chapter.
4	25 Ed. 3, St. 5.	The whole chapter.
5		The whole chapter.
3	28 Ed. 3.	The whole chapter.
11	31 Ed. 3, St. 1.	The whole chapter.
	46 Ed. 3.	The whole chapter.
4	1 Ric. 2.	(S.L.R. 1902). The whole chapter.
5	15 Ric. 2.	(Mortmain & Char. Uses Act). The whole chapter.
9	8 Hen. 6.	(S.L.R. 1902). The whole chapter.
20	4 Hen. 7.	The whole chapter.
12	11 Hen. 7.	(S.L.R. 1902). The whole Act.
4	21 Hen. 8.	sect. 1.
5		ss. 2, 4, 6.
10	23 Hen. 8.	(Mortmain & Char. Uses Act). The whole Act.
15		(S.L.R. 1902). The whole Act.
10	27 Hen. 8.	ss. 1, 2, 3, 4, 5, 7, 8.
9	32 Hen. 8.	(S.L.R. 1902). The whole Act.
28		ss. 1, 2, 4.
34		ss. 1, 2.
37		ss. 1, 3, 4.
39		(S. L. R. 1902). The whole Act.
7	1 Ed. 6.	s. 1.
4	3 & 4 Ed. 6.	The whole Act.
16	5 & 6 Ed. 6.	ss. 1, 2, 4.
12	1 P. & M.	s. 1.
9	5 Eliz.	s. 6.
5	13 Eliz.	ss. 1, 2, 3, 5.
6		The whole Act.
5	18 Eliz.	The whole Act.
4	27 Eliz.	ss. 1, 2, 3, 4
5	31 Eliz.	The whole Act.
		(S. L. R. 1902).
11		(S. L. R. 1902). The whole Act.
4	43 Eliz.	(Mortmain & Char. Uses Act.) The whole Act.
8		s. 1.
13	1 Jac. 1.	The whole Act.
3	21 Jac. 1.	ss. 1, 2, 3, 4, 6, 7, 8.
15		(S.L.R. 1902). The whole Act.
16		ss. 3, 7.
24		s. 1.
24	12 Car. 2.	ss. 8, 9.
7	16 Car. 2.	(S.L.R. 1902). The whole Act.
7	17 Car. 2.	(S.L.R. 1902). The whole Act.
11	18-19 Car. 2.	ss. 1, 4.

Chapter.	TITLE OF ACT.	EXTENT OF REPEAL.
10	22-23 Car. 2.	ss. 3, 4, 5.
3	29 Car. 2.	ss. 1, 2, 3, 4, 7, 8, 9, 10, 11, 15, 16.
7	29 Car. 2.	The whole Act.
7	30 Car. 2.	s. 1.
17	1 Jac. 2.	ss. 6, 7.
5	2 W. & M., Sess. 1.	ss. 1, 2, 3, 4.
14	3 W. & M.	The whole Act.
16	4 W. & M.	The whole Act.
18		The whole Act.
24		s. 12.
37	7-8 W. 3.	The whole Act.
11	8-9 W. 3.	s. 8.
27		s. 7.
22	10 W. 3.	The whole Act.
23(a)		The whole Act.
2	1 Anne.	s. 4.
8(b)	4-5 Anne.	ss. 9, 10, 12, 13, 19, 21, 27.
72(c)	6 Anne.	ss. 1, 2, 3, 4, 5.
18(d)	8 Anne.	ss. 1, 4, 6, 7, 8.
19(e)	9 Anne.	ss. 1, 2, 4.
25(f)		ss. 1, 2, 3, 4, 5.
2	8 Geo. 1.	The whole Act.
22	2 Geo. 2.	s. 13.
26	4 Geo. 2.	s. 1.
28		ss. 1, 5, 6.
14	6 Geo. 2.	s. 5.
35		The whole Act.
24	8 Geo. 2.	s. 5.
36	9 Geo. 2.	The whole Act.
19	11 Geo. 2.	ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23.
28	12 Geo. 2.	The whole Act.
18	13 Geo. 2.	s. 5.
19		(S.L.R. 1902).
30	15 Geo. 2.	ss. 1, 2, 4, 6, 7, 9.
34	18 Geo. 2.	The whole Act.
37	19 Geo. 2.	The whole Act.
44	24 Geo. 2.	ss. 1, 2, 6, 7.
33	26 Geo. 2.	s. 6.
16	9 Geo. 3.	ss. 8, 11.
48	14 Geo. 3.	The whole Act.
39	15 Geo. 3.	ss. 1, 2, 3, 4.
26	17 Geo. 3.	The whole Act.
1	27 Geo. 3.	The whole Act.
56	28 Geo. 3.	ss. 1, 2.
87	38 Geo. 3.	ss. 1, 2, 3, 4, 5, 6, 7.
98	39-40 Geo. 3.	ss. 1, 2, 4.

(a) c. 17 in Ruffhead's Ed.  
 (b) c. 16 in Ruffhead's Ed.  
 (c) c. 18 in Ruffhead's Ed.  
 (d) c. 14 in Ruffhead's Ed.  
 (e) c. 14 in Ruffhead's Ed.  
 (f) c. 20 in Ruffhead's Ed.

Chapter.	TITLE OF ACT.	EXTENT OF REPEAL.
101	52 Geo. 3. (Mortmain & Char. Uses Act).	The whole Act.
117	57 Geo. 3. (S.L.R. 1902.)	The whole Act.
85	9 Geo. 4. (Mortmain & Char. Uses Act).	The whole Act, except as far as it affects ecclesiastical rights of property.
36	11 Geo. 4, & 1 W. 4.	s. 15, sub.-ss. 15, 16, 18.
40		ss. 1, 2.
46		ss. 2, 3.
47		ss. 11, 12.
65		ss. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 30, 31, 32, 33, 34, 35, 44.
110	1-2 Vict.	ss. 14, 15 (a).
60	2-3 Vict.	ss. 1, 2.
82	3-4 Vict.	s. 1.
69	5-6 Vict.	ss. 1, 2.
96	10-11 Vict.	ss. 1, 2.
26	12-13 Vict.	ss. 2, 4, 5, 6, 7.
74		s. 1.
17	13 Vict.	ss. 2, 3.
35	13-14 Vict.	ss. 15, 17.
60		ss. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 29, 30, 32, 36, 37, 40, 41, 43, 44, 45, 48, 49, 51.
55	15-16 Vict.	ss. 1, 6, 7, 9.
43	18-19 Vict.	ss. 1, 2, 3, 4.
95	21-22 Vict.	s. 16.
1	2 Ed. 7.	ss. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22.
2		The whole Act.

(a) As to ss. 35, 36, 37, 42, 46, see App. Part IV.)

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SHOWING IMPERIAL ACTS, AND PARTS OF IMPERIAL ACTS, RELATING TO PROPERTY AND CIVIL RIGHTS APPEARING TO BE IN FORCE IN ONTARIO AT THE END OF THE YEAR, 1897, BY VIRTUE OF PROVINCIAL LEGISLATION, CONSOLIDATED IN THE REVISED STATUTES OF ONTARIO, 1897, VOLUME 3.

ABBREVIATIONS.—Sup., *Superseded by*; Rep., *Repealed by*; S.L.R., 1902, *Statute Law Revision Act, 1902*.

20 HEN. 3, 1285. (Statute of Merton.)						3 ED. 1. (Statute of Westminster, Prim.)					
Chapter.	Section.	CONSOLIDATED.			REMARKS.	Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.				Chap.	Sec.	Page.	
1		330	7	3826							
2		330	8	3826	16		342	{ 14 18	3893 3894		
9		340	1	3878	25	.....	.....	.....	.....	{	Rep. S.L.R. 1902.
Statute of uncertain Date. (The Statute of the Exchequer.) (51 HEN. 3, Stat. 4, in Ruffhead's Ed.) (See Imp. Rev. Stats., 1870, vol. 1, p. 126.)						26	.....	.....	.....	{	Rep. S.L.R. 1902.
Statute of uncertain Date. (The Statute of the Exchequer.) (51 HEN. 3, Stat. 4, in Ruffhead's Ed.) (See Imp. Rev. Stats., 1870, vol. 1, p. 126.)						27	.....	.....	.....	{	Rep. S.L.R. 1902.
Statute of uncertain Date. (The Statute of the Exchequer.) (51 HEN. 3, Stat. 4, in Ruffhead's Ed.) (See Imp. Rev. Stats., 1870, vol. 1, p. 126.)						28	.....	.....	.....	{	Rep. S.L.R. 1902.
Statute of uncertain Date. (The Statute of the Exchequer.) (51 HEN. 3, Stat. 4, in Ruffhead's Ed.) (See Imp. Rev. Stats., 1870, vol. 1, p. 126.)						29	.....	.....	.....	{	Rep. S.L.R. 1902.
52 HEN. 3. (Statute of Marlbridge)						6 ED. 1. (Statute of Gloucester.)					
Chapter.	Section.	CONSOLIDATED.			REMARKS.	Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.				Chap.	Sec.	Page.	
1		322	3	3798	5		330	21	3831		
4		342	{ 5 18	3889 3894							
15		342	10	3891							
23		{ 330 342	23 22	3831 3896							
7 ED. 1.						CONSOLIDATED.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.	Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.				Chap.	Sec.	Page.	
							333			{	Sup 2 Ed. 7 c. 2.

18 ED. 1.  
(Statute of Westminster Sec.)

Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
1	.	330	1	3825	<i>De Donis.</i>
22		330	22	3831	
23		337	10	3869	
32		333			{ Sup. 2 Ed. 7 c. 2.
34		330	9	3827	
37	.....	.....	.....	.....	{ Rep. S.L.R. 1902.

18 ED. 1.

Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
1		330	2	3825	{ ( <i>Quia Emptores.</i> )
2			3	3826	
3			4	3826	

25 ED. 1.  
(Magna Carta).

Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
7		{ 322 330	1 6 (1)	3797 3828	
8	.....	.....	.....	.....	{ Rep. S.L.R. 1902.
10	.....	.....	.....	.....	{ Rep. S.L.R. 1902.
14	.....	.....	.....	.....	{ Rep. S.L.R. 1902.

25 ED. 1.  
(Magna Carta.)

Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
18	.....	.....	.....	.....	{ Rep. S.L.R. 1902.
29		322	2	3798	
30	.....	.....	.....	.....	{ Rep. S.L.R. 1902.
37	.....	.....	.....	.....	{ Rep. S.L.R. 1902.

33 ED. 1.  
(Ordin. de Consop.)  
(Stat. 2, in Ruffhead's Ed.)

Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
		327	1	3818	

Statute of uncertain Date.  
(Imp. Rev. Stat. 1870, p. 125.)

Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
					Rep. S.L.R. 1902.

Statute of uncertain Date,  
(Imp. Rev. Stat. 1870, p. 126.)

Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
		342	5 9	3889 3890	



SCHEDULE B.—ACTS AND PARTS OF ACTS CONSOLIDATED.

Statute of uncertain Date. ( <i>Imp. Rev. Stat. 1870, p. 129.</i> )					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
		330	5	8826	

Statute of uncertain Date. ( <i>Imp. Rev. Stat. 1870, p. 132.</i> )					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
11		341	1	3833	
13		341	2	3833	

1 ED. 3, St. 2.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
14					{ Rep. S.L.R. 1902.

4 ED. 3.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
7					{ Rep. S.L.R. 1902.

5 ED. 3.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
9		322	2	3798	

18 ED. 3, St. 3.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
3		338			{ Sup. 2 Ed. 7 c. 2.

25 ED. 3, St. 5.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
4		322	2	3798	
5		337	13	3869	

28 ED. 3.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
3		323	2	3798	

31 ED. 3, St. 1.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
11		337	{ 5 6	3867	

46 ED. 3.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
		324	11	3805	Part only.

1 RIC. 2.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
4					{ Rep. S.L.R. 1902.

15 RIC. 2.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
5		333			{ Sup. 2 Ed. 7 c. 2.

8 HEN. 6.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
9					{ Rep. S.L.R. 1902.

4 HEN. 7.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
20		324	27	3810	

11 HEN. 7.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
12					Rep. S.L.R. 1902.

21 HEN. 8.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
4	1	337	12	3869	
5	2 4 6	337	5 9 1	3867 3868 3866	

23 HEN. 8.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
10		333			Sup. 2 Ed. 7 c. 2.
15					Rep. S.L.R. 1902.

27 HEN. 8.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
10	1	331	2	3836	
	2		3	3837	
	3		4	"	
	4		5	3838	
	5		6	"	
	7		7	"	
	8		8	"	

32 HEN. 8.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
9					Rep. S.L.R. 1902.

28	1 2	330	34 35	3834 3835	
34	1 2	330	12 13	3827 3828	
37	1 3 4	337 342	11 3 4	3869 3869 "	

39					Rep. S.L.R. 1907. Sup. 7b. a 20.
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1 ED. 6.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
7	1	324	2	3802	

3-4 ED. 6.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
4		324	12	3806	

5-6 ED. 6.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
16	1 2 4	328	1 2 3	3820 " "	

1 P. & M.					
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		Chap.	Sec.	Page.	
12	1	342	14	3893	
5 ELIZ.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
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9	6	324	13	3806	
13 ELIZ.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
5	1	334	1	3847	
			2	3848	
			3	"	
			4	"	
6		324	13	3806	
18 ELIZ.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
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5		324	28	3811	
			29		
27 ELIZ.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
4	1	334	5	3849	
			6	"	
			7	"	
			8	3850	

81 ELIZ.					
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		Chap.	Sec.	Page.	
5	.....	.....	.....	.....	Rep. S.L.R. 1902.
11	.....	.....	.....	.....	Rep. S.L.R. 1902.
43 ELIZ.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
4	1	333		3846	Sup. 2 Ed. 7. c. 2.
8	1	337	8	3868	
1 JAC. 1.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
13		324	24	3810	
21 JAC. 1.					
Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
8	1	323	1	3799	
			2	"	
			3	"	
			4	3800	
			5	"	
			6	"	
			7	"	
			8	"	
15					Rep. S.L.R. 1902.
16	3	324	38	3813	
			39	"	
24	1	324	25	3810	

12 CAR. 2.					REMARKS.
Ch. pter.	Section.	CONSOLIDATED.			
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	9		3	"	

16 CAR. 2.					REMARKS.
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		Chap.	Sec.	Page.	
7	.....	.....	.....	.....	Rep. S.L.R. 1902.

17 CAR. 2.					REMARKS.
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		Chap.	Sec.	Page.	
7	.....	.....	.....	.....	Rep. S.L.R. 1902.

18-19 CAR. 2.					REMARKS.
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		Chap.	Sec.	Page.	
11	1 4	380	14	3828	
			15	"	

22-28 CAR. 2.					REMARKS.
Chapter.	Section.	CONSOLIDATED.			
		Chap.	Sec.	Page.	
10	3 4 5	335	2	3851	
			3	3852	
			4	"	
			5	"	

29 CAR. 2.					REMARKS.
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		Chap.	Sec.	Page.	
3	1 2 3 4 7 8 9 10 11 15 16	338	2	3872	
			3	"	
			4	3873	
			5	"	
			6	"	
			7	"	
			8	"	
			9	"	
			10	3874	
			11	"	
			15	"	
			16	3875	
7	6	324	3	3803	Rest Rep. S. L.R. 1902.

30 CAR. 2.					REMARKS.
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		Chap.	Sec.	Page.	
7	1	387	16	3870	

1 JAC. 2					REMARKS.
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		Chap.	Sec.	Page.	
17	6 7	387	6	3867	
			5	3852	

2 W. & M. Sess. 1.					REMARKS.
Chapter.	Section.	CONSOLIDATED.			
		Chap.	Sec.	Page.	
5	1 2 3 4	342	16	3894	As to s. 1, see S.L.R. 1902, s. 22.
			6	3889	
			15	3893	
			18 (2)	3895	

3 W. & M.					REMARKS.
Chapter.	Section.	CONSOLIDATED.			
		Chap.	Sec.	Page.	
14	2	337	20	3871	Sup. S.L.R. 1902, s. 6.

4 W. & M.					REMARKS.
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		Chap.	Sec.	Page.	
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7-8 W. 3.					REMARKS.
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		Chap.	Sec.	Page.	
18	.....	.....	.....	.....	Rep. S.L.R. 1902.
24	12	337	17	3870	

7-8 W. 3.					REMARKS.
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37	.....	338	.....	3846	Sup. 2 Ed. 7, c. 2.

8-9 W. 3.

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		Chap.	Sec.	Page.	
11	8	324	4	3804	
27	7		26	3810	

10 W. 3.

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		Chap.	Sec.	Page.	
22		330	10	3827	
23(a)	.....	.....	.....	.....	Rep. S.L.R. 1902.

1 ANNE.

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		Chap.	Sec.	Page.	
2	4	324	2	3802	

4-5 ANNE.

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		Chap.	Sec.	Page.	
3 (b)	9	342	24 (1)	3896	Sup. 2 Ed. 7, c. 1, s. 7.
	10		24 (2)	3897	
	12	324	8	3805	
	13		9	"	
	19	324	40	3813	
	21	330	11	3827	
	27	324	10	3805	

6 ANNE.

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72(c)	1	330	16	3829	
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	4		19	"	
	5		20	3831	

(a) c. 17 in Ruffhead's Ed.  
 (b) c. 16 in Ruffhead's Ed.  
 (c) c. 18 in Ruffhead's Ed.

8 ANNE.

Chapter.	Section.	CONSOLIDATED.			REMARKS.
		Chap.	Sec.	Page.	
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9 ANNE.

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4 GEO. 2.

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(a) c. 14 in Ruffhead's Ed.  
 (b) c. 14 in Ruffhead's Ed.  
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	10		14 (3)	3893	
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11 GEO. 2.					
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	17				
	18	342	21	3896	Rep. S.L.R. 1902.
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12 GEO. 2.					
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13 GEO. 2.					
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18	5	324	87	3813	
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74	1	336	4	3855	

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	18		42	“		13	13	“			
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	20		44	“		Sched.	Sched.	“			
	22	343	16	3894							

## SCHEDULE C.

Shewing Imperial Acts, and parts of Imperial Acts, relating to property and civil rights appearing to be in force in Ontario by virtue of Provincial Legislation which are not repealed, revised or consolidated.

Chapter.	TITLE OF ACT.	SUBJECT OF ACT.
17	52 Hen. 3 (St. of Marlbridge).	Guardians in soccage.
2	31 Car. 2.	<i>Habeas Corpus</i> Act.
5	7 Anne.	British subjects born abroad.
12		Ambassadors.
21	4 Geo. 2.	British subjects born abroad.
23	24 Geo. 2.	Correction of the Calendar.
21, ss. 1, 2	13 Geo. 3.	British subjects born abroad.
49	21 Geo. 3.	The Lord's Day Act.
		In addition to the above, (1) all Acts or parts of Acts in force relating to Marriage; and (2) all Acts or parts of Acts in force relating to ecclesiastical property, and the rights of persons therein.

**NOTE.**—The various Imperial Statutes included in the Revised Statutes of Ontario, 1897, volume 3, were, pursuant to the direction of the Honourable John Morison Gibson, K.C., His Majesty's Attorney-General for Ontario, afterwards embodied in an Order of His Honour the Lieutenant-Governor of Ontario in Council dated 17th December, 1900, revised and consolidated by Mr. George Smith Holmsted, Barrister-at-Law and Senior Registrar of the High Court of Justice for Ontario, under the supervision of a Committee appointed for the purpose by His Honour the Lieutenant-Governor, and consisting of The Honourable Sir John Alexander Boyd, K.C.M.G., Chancellor of Ontario and President of the High Court of Justice for Ontario; The Honourable Sir William Ralph Meredith, Chief Justice of the Common Pleas; The Honourable Charles Moss, one of the Justices of the Court of Appeal; The Honourable William Glenholme Falconbridge, Chief Justice of the King's Bench; and The Honourable Sir Thomas Wardlaw Taylor, formerly Chief Justice of Manitoba, advising and consulting with The Honourable the Attorney-General.

Mr. Albert Edward Trow, Barrister-at-Law, Clerk of the Process, assisted in the work connected with the revision and consolidation.

# REVISED STATUTES OF ONTARIO, 1897.

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