

Capital Stock of the said Company under the said Act heretofore made and done in pursuance of and according to any regulations made by any President and Directors of the said Company for the time being, since the first meeting of the Stockholders, and since the election of the first Directors of the said Company, shall be deemed and are hereby declared as good and valid to all intents and purposes, as if the said first meeting of the said Stockholders, and the election of the first Directors and President of the said Company had been in all respects strictly according to the directions of the said Acts, and as if Bye Laws had been made by the Stockholders for the regulation and management of the affairs of the said Corporation, in pursuance of the power vested in them for that purpose.

IV. And be it further enacted, That in any case where default has been made before the passing of this Act, in payment of any part of the residue of the Capital Stock of the said Company, which has been heretofore by the President and Directors for the time being of the said Company required to be paid, and which remains still unpaid at the time of passing this Act, every share upon which such default shall have been so made, shall stand and become absolutely forfeited to the said Corporation, unless the amount so required to be paid thereon shall be fully paid and satisfied to the President and Directors of the said Company for the time being, within two months after the passing of this Act, or within such further time as the said President and Directors of the said Company for the time being, or the major part of them may consent to give for the payment thereof: And in case of such forfeiture, the said President and Directors of the said Company for the time being, or the major part of them, shall at any time within one month after such forfeiture have full power and authority if they see fit to proceed to sell every such share so forfeited at auction, first giving one month's notice, in two or more of the public newspapers in the said Province, of such sale, and the proceeds thereof to be applied to the service and use of the said Company.

V. And be it further enacted, That it shall and may be lawful for the President and Directors for the time being, or the major part of them from time to time, when they or the major part of them see fit, to call a general meeting of the Stockholders of the said Company, by giving one month's notice of the time or place of such meeting in two or more of the public newspapers published in Saint John, and at such general meeting so called, and also at any annual meeting of the said Stockholders held pursuant to the provisions of the said Acts, it shall be lawful for the said Stockholders of the said Company, or the major part of them then present, and they are hereby authorized and empowered to make all such Bye Laws, Ordinances and Regulations for the good management of the affairs of the said Corporation, as they are authorized and empowered to make by the first Section of the said first mentioned Act, and also in like manner from time to time to alter, annul, add to or amend the same: and in such Bye Laws, Ordinances and Regulations, the said Stockholders shall have full power and authority to make such provisions as they or the major part of them then present shall see fit, for securing the payment by the Shareholders and their assignees of the residue of the Capital Stock of the said Company, not heretofore called for by the President and Directors of the said Company, or any part thereof, according as the same may be from time to time hereafter required by the President and Directors for the time being of the said Company, in manner and according to the directions of the said Acts, and also to provide for the forfeiture of the shares in case of default in said payment: and all such Bye Laws, Ordinances and Regulations so to be made, shall be as binding upon the Stockholders and their assignees for the time being, so long as the same remain in force, as if they were enacted by this or any other Act of the General Assembly of this Province.

VI. Provided always, and be it further enacted, That nothing herein contained shall be construed to authorize the said Company to call upon any Stockholder for any instalment after notice being given to the said Company of the abandonment of any Stock held by such Stockholder.

#### CAP. XXXIV.

An Act to provide for making and maintaining a Canal across Grimross Neck, in Queen's County.

Passed 23d March 1839.

**W**HEREAS the cutting a Canal across Grimross Neck, in Queen's County, would greatly facilitate the navigation of the River Saint John, and advance the general interests of the Province:

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That it shall and may be lawful for the Lieutenant Governor or Commander in Chief for the time being, to appoint three fit and proper persons to be Commissioners for opening, cutting, finishing and maintaining a Canal across Grimross Neck, in Queen's County, and to remove them or either of them at pleasure, and to appoint others in their stead.

II. And be it enacted, That it shall and may be lawful to and for the said Commissioners, their agents, servants, workmen and assistants, and they are hereby authorized and empowered, to design, erect, order, dig, excavate and build, and to complete, maintain and keep in repair a Canal across the isthmus or neck of land commonly called Grimross Neck, in Queen's County, at such place as they may deem most advisable and fit for such Canal, whether on private property or on a public highway, and to dig and make proper foundations in the River Saint John and Gagetown Creek, and on the lands and grounds lying on each side of said Canal, and to cut and level the banks of the said River and Creek in such manner as may be necessary and proper for making the said Canal, and to cut, remove, take and carry away all and every impediment whatever, which may in any wise tend to hinder or impede the erecting and completing the said Canal, and to execute all other things requisite and necessary, useful or convenient, for erecting, digging, maintaining and supporting the said Canal according to the true intent and meaning of this Act; and further, that they may from time to time enter and go in and upon the lands and grounds adjacent to the said Canal for the purpose of making surveys, examinations, or other necessary arrangements for fixing the site of the said Canal; and further that for the purpose of erecting, digging, building, maintaining, repairing and supporting the said Canal, the said Commissioners shall from time to time have full power and authority to land and place on either side of said Canal, within twenty yards of the same, all materials and other things to be used in and about the same, and there to work and use such materials and things according as they the said Commissioners, and the persons to be by them appointed, shall think

proper, without any previous agreement with the owner or owners of the land, doing as little damage as may be, and making such satisfaction as hereinafter mentioned to the respective owners and occupiers of all lands and grounds, tenements and hereditaments which shall be used and occupied, altered, damaged, spoiled, taken or made use of by means or for the purposes of this Act.

III. And be it enacted, That the said Commissioners shall make, allow and pay reasonable and proper compensation and satisfaction for all lands, tenements and hereditaments taken, used and occupied, altered, damaged or spoiled by means of and for the uses and purposes of this Act, to be agreed upon by the said Commissioners and the respective owners and occupiers of such lands, tenements and hereditaments; and in case of disagreement between them or any of them, then such compensation and satisfaction shall be determined by three arbitrators, one to be chosen by the said Commissioners and one by the owner or owners, occupier or occupiers of the private property in question; which two arbitrators so chosen shall choose the third arbitrator, and in case of their not agreeing in such choice within ten days after their appointment, then and in such case it shall and may be lawful for the Lieutenant Governor or Commander in Chief for the time being, upon application of the said Commissioners to appoint the third arbitrator; the award of the said arbitrators or any two of them shall be final and conclusive in the matters referred to them; and the amount adjudged and awarded to them respectively shall be paid by the said Commissioners within thirty days after such award shall be duly made and delivered, and in case any of the said owners or occupiers of such property shall decline or refuse to make such agreement or appoint such arbitrator, then and in such case it is hereby declared that such person or persons so declining or refusing, shall have no other remedy, either at law or in equity, against the said Commissioners for any loss or damage which he, she or they may sustain by reason of making, erecting, digging, building, finishing and maintaining such Canal.

IV. And be it enacted, That if any person or persons shall wilfully or maliciously, and to the prejudice of the said undertaking, break, damage, throw down, destroy, injure or remove any of the works to be erected or materials to be used by virtue of this Act, any such person or persons so offending shall be deemed and adjudged guilty of felony, and being lawfully convicted thereof shall be liable and subject to the punishment prescribed for felony in and by an Act made and passed in the first year of the reign of His late Majesty King William the Fourth, intituled "An Act for improving the administration of Justice in Criminal cases."

V. Provided always and be it enacted, That no greater sum shall be granted by the Legislature of this Province for the cutting, making and completing of the said Canal, and for the land through which the same shall be cut, than the sum of one thousand two hundred and fifty pounds, and that all further expense incurred in and about the making and completing of the same, shall be borne by individual subscription.

VI. And be it enacted, That it shall not be lawful for the Commissioners to be appointed under the provisions of this Act, to enter into any Contract for the cutting, making and completing of the said intended Canal until a sufficient sum of money shall be raised and paid from individual subscriptions; which, with the said sum of one thousand two hundred and fifty pounds mentioned in the fifth section of this Act, shall be deemed sufficient to complete the said work, any thing in this Act contained to the contrary notwithstanding.

VII. And be it enacted, That the said Canal and all and singular the lands on either side taken in the manner hereinbefore pointed out, and all roads and paths along the same, and all other appurtenances to the said lands and Canal belonging, shall be deemed and taken to be the public property of the Province, and under the control of the Legislature thereof, and shall be free from any toll or charge.

#### CAP. XXXV.

An Act for the improvement of the Practice in the Court of Chancery.

Passed 23d March 1839.

**W**HEREAS the Practice of the Court of Chancery is in many respects dilatory and expensive, and ill adapted to the state of the Province, and requires extensive alterations and amendments:

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the Chancellor, by and with the advice and consent of the Master of the Rolls, shall have full power and authority from time to time to direct and declare the forms of process, and to prescribe, modify, alter and amend the practice and proceedings to be observed in all matters of which the said Court now has or hereafter may have cognizance and jurisdiction.

II. And be it enacted, That there shall be three Terms of the said Court in each year, that is to say: Hilary Term, to commence on the last Tuesday in January and to end on the Saturday then next ensuing; Trinity Term, to commence on the first Tuesday in June and to end on the Saturday then next ensuing; and Michaelmas Term, to commence on the first Tuesday in October and to end on the Saturday then next ensuing; and that causes and other matters to be heard in the said Court may be brought to hearing and heard and determined in vacation as well as in term, under such regulations as may be established in that behalf by the rules and orders of the said Court.

III. And be it enacted, That the common gaol of the County of York shall be the prison of the said Court, provided always that in case it shall be expedient and the ends of justice be thereby answered, any prisoner of the Court may be committed to the common gaol of any County within which he may have been arrested, in case the Court shall so order and direct.

IV. And be it enacted, That it shall be the duty of the Sheriffs in the several Counties to serve any writs of subpoena, or execute any process of this Court within their respective Counties that may be sent to them for that purpose, and they shall be entitled to the following fees and emoluments in respect of the same, that is to say: for the service of every subpoena to appear and answer, two shillings and sixpence; for every arrest under a writ of attachment or other process, five shillings; and also the same allowance for travel and poundage as in case of process issuing out of the Courts of Common Law: provided always that no charge for poundage shall be allowed except in case of monies actually received and paid over under process of this Court, and the amount of such poundage shall in such cases be levied and received in addition to the sum directed to be paid or levied by such process.

V. And be it enacted, That all Sheriffs, Deputy Sheriffs, Gaolers, Constables and other Officers shall be aiding, assisting and obeying the said Court in the exercise of its jurisdiction whenever required so to do.

VI. And be it enacted, That in case the Plaintiff, in any suit commenced or to be commenced in the said Court, shall neglect to proceed in the same in due time, according to the practice of the said Court, the Bill may be ordered to be dismissed, and in case the Defendant shall neglect to appear in due time after service of process, or shall neglect to put in his answer, or to take any other necessary step in the cause, within the time in that behalf limited by the practice of the said Court, the Bill may nevertheless be taken against him as confessed, subject nevertheless to such regulations and restrictions as may be established and provided in that behalf by the rules and orders of the said Court.

VII. And be it enacted, That the several Masters in ordinary in this Court now appointed, or hereafter to be appointed, shall have power to act as examiners in the said Court, and in any case where, from the remoteness of residence of any examiner from the place of residence of the witness, or other circumstance it may be deemed expedient, the Chancellor or Master of the Rolls shall have full power and authority, by order of the said Court, specially to appoint some other person or persons *pro hac vice*, who shall have power to administer the oath to the witnesses and take the examination in such cause: provided always that no examination be taken by any examiner, until such examiner shall have been first duly sworn according to the rules and regulations of the said Court to be established in that behalf.

VIII. And be it enacted, That the examination of witnesses in matters pending in the said Court to such extent and subject to such rules and regulations as may in that behalf be prescribed and established, may be conducted on questions suggested and proposed at the time of examination, and be attended by the parties, their Solicitors and Council.

IX. And be it enacted, That all monies that shall become subject to the control and distribution of this Court, shall be paid into the hands of such person or body corporate or politic as the Master of the Rolls shall from time to time direct, or be vested in such securities as the Master of the Rolls shall approve, and all interest or increase accruing thereon shall be added to the principal and distributed therewith to the person entitled to the same, subject to such rules and regulations as may be established in that behalf.

X. And be it enacted, That where in any suits pending in the said Court the cause of action shall survive, such suit shall not abate by reason of the death of one or more of the Plaintiffs or Defendants, but upon suggestion of such death to the Court the suit shall be allowed to proceed in favor of or against the surviving party as the case may be, and in case of the death of one or more Plaintiffs or Defendants in any suit where the cause of action shall not survive, it shall only abate as to the person or persons so dying and not otherwise.

XI. And be it enacted, That in all cases where it shall be necessary to revive a suit against the representatives of a deceased defendant, no bill of revivor shall be necessary, but the Court may, by order, direct that the same stand revived upon the petition of the Plaintiff, subject to such rules and regulations as may be made in that behalf.

XII. And be it enacted, That the said Court shall have power to enforce performance of any decree, or obedience thereto, by execution against the body of the party against whom such decree is made, or against the goods and chattels, and in default thereof the lands and tenements of such; which execution so issued shall have the like effect as executions issuing out of the Supreme Court of the said Province, and every person so imprisoned under any execution issuing out of the said Court of Chancery shall be entitled to the like benefit of any statute made for the relief of insolvent debtors, as if arrested under process of the said Supreme Court.

XIII. And be it enacted, That in all matters relating to the practice of this Court not otherwise particularly provided for by Legislative enactment or the rules and orders of this Court, the rules of practice of the High Court of Chancery in England, as now established, shall be in force, subject nevertheless to the like exceptions, limitations, restrictions and rules of construction in the application of the same as the practice of the said High Court of Chancery prevailing and in force at the time of the erection of this Province have heretofore been, and subject to be altered, modified and restricted by such rules of practice as may be hereafter from time to time introduced and established in the Court of Chancery of this Province by any Act or Acts of the General Assembly, or the orders of the said Court.

XIV. And be it enacted, That from and after the passing of this Act it shall and may be lawful for the Chancellor, by and with the consent of the Master of the Rolls, to prepare and make a proper table of fees for the Court of Chancery in this Province, in lieu of the table of fees at present established in that Court, which table of fees so to be made and established as aforesaid shall be in full force and effect from the time notice thereof shall be given by the Master of the Rolls in the Royal Gazette, until altered by any Legislative enactment in this Province.

#### CAP. XXXVI.

An Act relating to the partition of lands, tenements and hereditaments, held in coparcenary, joint tenancy and tenancy in common.

Passed 23d March 1839.

**W**HEREAS the present mode of proceeding for the partition of lands, tenements, and hereditaments, held in coparcenary, joint tenancy and tenancy in common, has been found inconvenient:

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That from and after the passing of this Act, the partition of lands, tenements, and hereditaments, held in coparcenary, joint tenancy or tenancy in common, shall be effected by the Court of Chancery according to the practice and proceedings established or to be established in that Court.

II. And be it enacted, That in case any of the parties to any proceeding in the said Court of Chancery for a partition shall be infants under the age of twenty one years, it shall and may be lawful for the said Court to appoint a guardian or guardians *ad litem* for such infant, in like manner as such guardians may be appointed in any other suit in the said Court.

III. And be it enacted, That the decree of the said Court, whereby any part or portion of lands, tenements or hereditaments, held in coparcenary, joint tenancy or tenancy in common shall be decreed to any coparcener, joint tenant, or tenant in common, in