

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That no person or persons shall be liable to be summoned or impelled to serve as a Juror or Jurors in any County in this Province, upon any inquest or inquiry to be taken, or made by or before any Sheriff or Coroner in any County of this Province, or by virtue of any writ or writs issued out of any of the Courts of this Province, or by virtue of any other legal authority or power whatsoever, who shall not be duly qualified to serve as Jurors upon trials in any Court of Law within this Province.

II. And be it enacted, That if any person or persons having been duly summoned to serve on a Jury in any County in this Province upon any inquest or inquiry before any Sheriff as aforesaid, or Coroner, shall not after being openly called three times, appear and serve on such Jury, every such Sheriff, or in his absence the under Sheriff, and every such Coroner are hereby authorized and empowered (unless some reasonable excuse shall be proved on oath or affidavit) to impose such fine upon every person so making default as they shall respectively think fit, not exceeding ten shillings; and every such Sheriff, under Sheriff and Coroner respectively, shall immediately after taking any such inquisition, make out and sign a certificate containing the Christian and surname, the residence and trade or calling of every person so making default, together with the amount of the fine imposed, and the cause of such fine, and shall transmit such certificate to the Clerk of the Court, out of which the writ of inquiry in such case shall have issued within thirty days after imposing such fine, and every such Clerk is hereby required within such time as aforesaid, to enter the fines so certified on a roll or schedule in same manner as all other fines imposed by such Courts respectively on Jurors are entered, and the same shall be levied and applied in like manner and subject to the like powers, provisions, and penalties in all respects as is provided by an Act made and passed in the sixth year of the reign of His late Majesty King George the Fourth, intituled "An Act to provide for the more effectual recovery of fines imposed upon Jurors and officers attending the Courts of Justice in this Province."

III. And be it enacted, That no person or persons, who shall after the passing of this Act serve on any such Jury in any County of this Province, upon any inquest or inquiry before any Sheriff or Coroner, shall be allowed to take for serving on such Jury more than the sum of money which such Sheriff, or in his absence the under Sheriff or Coroner shall think just and reasonable, not exceeding the sum of two shillings and six pence.

IV. And be it enacted, That from and after the passing of this Act, no person shall be qualified to serve as a Petit Juror unless he be possessed of real or personal estate of the value of fifty pounds.

V. And whereas from the increased business in the Supreme Court, it may sometimes be necessary to require the attendance of a second Jury for the trial of causes at the Circuit Courts or sittings; be it enacted, that it shall and may be lawful whenever the same shall appear to be necessary for any Judge of the said Supreme Court to issue a precept under his hand and seal, directed to the Sheriff of any County or City and County in this Province, commanding such Sheriff to summon twenty four men duly qualified for that purpose, to appear and serve as Jurors for the trial of causes both civil and criminal at any Circuit Court or sittings, as the case may be, on a day to be named in such precept, which day shall in no case be earlier than the sixth day after the day appointed for the opening and commencement of such Circuit Court or sittings; and such Sheriff shall cause such persons to be duly summoned, and shall return a panel of such Jurors to the Court on the day named in the precept; and such Jurors being duly summoned according to Law shall give their attendance, and shall be charged and bound in such and the like manner, and upon like pains and penalties for non appearance and non attendance, or for any misdemeanor or default at the Court to which they may be summoned, as if summoned and returned upon the first panel of Jurors for the trial of causes at such Court.

CAP. XLVIII.

An Act to amend the Law relating to the summary practice in the Inferior Courts of Common Pleas.

Passed 16th March 1836.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That in any summary action in any of the Inferior Courts of Common Pleas within this Province, wherein the Plaintiff may be entitled to judgment by default under the provisions of the sixth section of an Act made and passed in the thirty fifth year of the reign of His Majesty King George the Third, intituled "An Act to regulate the terms of the sittings of the Inferior Courts of Common Pleas in this Province, and to enlarge the jurisdiction of the same, and for the summary trials of certain actions," the Court in which such action shall have been instituted, or any Judge thereof may let in the Defendant to appear and defend in like manner and upon such terms as in actions not summary by the practice of the said Court, may be done after interlocutory judgment; any thing in the said sixth section of the said Act or in any other Act to the contrary thereof in any wise notwithstanding.

II. And be it enacted, That in all summary actions in the said Courts any matters in bar to the action, which in actions not summary ought to be pleaded specially, may be given in evidence under the general issue; provided that notice in writing of such matters be given to the Plaintiff's Attorney at the same time with the plea, and infamy or coveture of the Defendant shall not in any summary action in the said Courts be given in evidence unless such notice thereof be given, and that notice of trial shall be given as in other cases.

III. And be it enacted, That if any Plaintiff proceed according to the practice of the said Courts in actions not summary in any case in which by the provisions of the several Acts of Assembly of this Province, the proceedings ought to be summary, he shall not be entitled in any such case to more costs than if he had proceeded in a summary manner, unless he obtains the order of the Court in which such action shall be prosecuted for larger costs upon good cause shown therefor, any Law, Statute or usage to the contrary notwithstanding.

IV. And be it enacted, That in every such summary action which may be tried by a Jury, a fee of one guinea shall be taxed as costs in the cause for the successful party.

CAP. XLIX.

An Act for rendering a writing necessary to the validity of certain promises and engagements.

Passed 16th March 1836.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That no action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy; or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith: Provided always, that nothing herein contained shall apply to any such promise or ratification made before the time appointed for this Act to take effect.

II. And be it further enacted, That no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given, concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain money or goods upon credit, unless such representation or assurance be made in writing signed by the party to be charged therewith: Provided also, that nothing herein contained shall apply to any such representation or assurance made before the time appointed for this Act to take effect.

III. And whereas by an Act of Assembly passed in the twenty sixth year of the reign of King George the Third, intituled "An Act for prevention of frauds and perjuries," it is among other things enacted, that no contract for the sale of any goods, wares and merchandizes, for the price of ten pounds sterling or upwards, shall be allowed to be good except the buyer shall accept part 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: And whereas it has been held that the said recited enactments do not extend to certain executory contracts for the sale of goods, which nevertheless are within the mischief thereby intended to be remedied, and it is expedient to extend the said enactments to such executory contracts: Be it enacted, That the said enactments shall extend to all contracts for the sale of goods of the value of ten pounds sterling and upwards made after the time appointed for this Act to take effect, notwithstanding the goods may be intended to be delivered at some future time or may not at the time of such contract be actually made, procured or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

IV. And be it further enacted, That no acceptance of any inland bill of

exchange shall be sufficient to charge any person, unless such acceptance (if made after the time appointed for this Act to take effect) be in writing on such bill, or if there be more than one part of such bill, on one of the said parts.

V. And be it further enacted, That this Act shall commence and take effect on the first day of January one thousand eight hundred and thirty seven.

CAP. L.

An Act to authorize the Justices of the Peace in and for the City and County of Saint John, to erect a building in the said City, for a common Gaol and House of Correction, and to raise a sum of money for erecting and completing the same.

Passed 16th March 1836.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That the Justices of the Peace for the City and County of Saint John at any General Sessions of the Peace hereafter to be holden, or at any Special Sessions to be for that purpose convened, or the major part of them so assembled, be and they are hereby authorized and empowered by themselves or by one or more Committees of Management for that purpose to be appointed to contract and agree with able and sufficient workmen for erecting and finishing a building within the said City, suitable and proper for a common Gaol and House of Correction, for such sum and sums of money not however exceeding in the whole the sum of four thousand pounds, and in such manner and form as shall be approved of by the said Justices.

II. And be it further enacted, That the said Justices at any General Sessions of the Peace for the said City and County, be and they are hereby authorized and empowered to borrow such sums of money as may from time to time be required for the erecting and completing of the said building, not exceeding in the whole the sum of three thousand pounds, to be paid off and discharged in manner hereinafter mentioned, the same to be taken in loans of not less than one hundred pounds, and that certificates or notes in the following form or to that effect, shall be prepared and delivered to the persons from whom such loans may be obtained, viz:—

Number.
City and County of Saint John, ss: These are to certify that (here insert residence and addition of lender,) hath lent and advanced to the Justices of the Peace for the said City and County, the sum of one hundred pounds currency, which sum is payable to him or his order, together with interest, at and after the rate of per centum per annum, pursuant to an Act of Assembly made and passed in the sixth year of the reign of His Majesty King William the Fourth, intituled "An Act to authorize the Justices of the Peace in and for the City and County of Saint John, to erect a building for a common Gaol and House of Correction in the said City, and to raise a sum of money for erecting and completing the same."

Dated the day of in the year of our Lord one thousand eight hundred and thirty

By order of the Sessions.

A. B. Presiding Justice.

C. D. Clerk.

Which said certificates or notes shall be signed by the Justice presiding at the said Sessions and countersigned by the Clerk, and shall be respectively numbered according to the time in which the same may be made and issued, and a memorandum thereof shall be duly entered by the Clerk in the minutes of the said Court.

III. And be it further enacted, That the said certificates or notes shall be negotiable in the same manner as promissory notes; and that the holders thereof shall be entitled to receive interest from the same annually to be paid by the Treasurer of the said County out of the assessments hereinafter mentioned.

IV. And be it further enacted, That it shall and may be lawful for the said Justices of the Peace of the said City and County, and they are hereby authorized and required to make a rate and assessment, each and every year of such sum of money, besides the charge for assessing and collecting as will discharge the interest of the loan contracted by virtue of this Act, until the total amount of the loan and all interest thereon heretofore obtained by virtue of the Act of Assembly made and passed in the ninth year of the reign of His late Majesty King George the Fourth, intituled "An Act to authorize the Justices of the Peace of the City and County of Saint John, to raise a sum of money for completing the Court House of the said City and County is fully paid off and discharged," and from and after the time of the payment and discharge of the total amount of such loan so contracted, by virtue of the same Act, it shall and may be lawful for the said Justices, and they are hereby authorized and required to make a rate and assessment of not exceeding four hundred pounds in each and every succeeding year, besides the charge for assessing and collecting for the purpose of discharging the principal and interest of the loans contracted by virtue of this Act, until the same shall be paid off; all which said several sums of money are to be assessed, levied, collected and paid in such proportions, and in the same manner as any other County rates for public charges are or may be assessed, levied, collected and paid under and by virtue of any Act or Acts which at the time of making such assessment may be in force in the Province, for the assessing, levying and collecting of rates for public charges.

V. And be it further enacted, That the monies so to be assessed as aforesaid, shall from time to time be applied after discharging the yearly interests due on the several loans contracted by virtue of this Act to the payment of the principal sums mentioned in such certificates or notes in due order according to the numbers, beginning with number one, and that the Treasurer of the said County shall from time to time give one month's public notice by advertisement in one of the newspapers published in the said City, for calling in such and so many of the certificates or notes as he is prepared to pay off, specifying the numbers in such advertisement, and that from and after the expiration of the time named in the said notice, the interest on such certificates or notes shall cease.

VI. And be it further enacted, That the said County Treasurer shall be entitled to have and retain the sum of one pound per centum on every one hundred pounds for his services, in receiving and paying the said monies so be assessed under the provisions of this Act and no more.

CAP. LI.

An Act relating to the limitation of Personal Actions.

Passed 16th March 1836.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That all actions of debt for rent upon an indenture of demise, all actions of covenant or debt upon any bond or other specialty, and all actions of debt or *scire facias* upon any judgment or recognizance, and also all actions of debt upon any award where the submission is not by specialty, and all actions for penalties, damages or sums of money given to the party grieved, by any statute or Act of Assembly, now or hereafter to be in force, that shall be sued or brought, shall be commenced and sued within the time and limitation hereafter expressed, and not after; that is to say, the said actions of debt for rent upon an indenture of demise, or covenant, or debt upon any bond or other specialty, actions of debt or *scire facias* upon any judgment or recognizance within ten years after the passing of this Act, or within twenty years after the cause of such action or suits, but not after; the said actions by the party grieved one year after the passing of this Act or within two years after the cause of such actions or suits, but not after; and the said other actions within three years after the passing of this Act or within six years after the cause of such actions or suits, but not after; provided that nothing herein contained shall extend to any action given by any statute: when the time for bringing such action is or shall be by any statute specially limited.

II. And be it further enacted, That if any person or persons that is or are, or shall be entitled to any such action or suit, or to such *scire facias*, is or are, or shall be at the time of any such cause of action accrued within the age of twenty one years, *femme covert*, *non compos mentis* or beyond the seas, then such person or persons shall be at liberty to bring the same actions so as they commence the same within such times after their coming to or being of full age, discovery, of sound memory, or returned from beyond the seas, as other persons having no such impediment should according to the provisions of this Act have done; and that if any person or persons against whom there shall be any such cause of action is or are, or shall be at the time such cause of action accrued beyond the seas, then the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such times as are before limited after the return of such person or persons from beyond the seas: Provided always, that if any acknowledgment shall have been made either by writing signed by the party liable by virtue of such indenture, specialty, judgment or recognizance, or his agent, or by part payment or part satisfaction on account of any principal or interest being then due thereon, it shall and may

be lawful for the person or persons entitled to such actions to bring his or their action for the money remaining unpaid and so acknowledged to be due within twenty years after such acknowledgment by writing, or part payment or part satisfaction as aforesaid, or in case the person or persons entitled to such action shall at the time of such acknowledgment be under such disability as aforesaid, or the party making such acknowledgment be at the time of making the same beyond the seas, then within twenty years after such disability shall have ceased as aforesaid, or the party shall have returned from beyond seas as the case may be, and the plaintiff or plaintiffs in any such action on any indenture, specialty, judgment or recognizance, may by way of replication state such acknowledgment and that such action was brought within the time aforesaid in answer to a plea of this statute.

III. And nevertheless be it enacted, if in any of the said actions judgment be given for the plaintiff and the same be reversed by error, or a verdict pass for the plaintiff and upon matter alleged in arrest of judgment the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill, that in all such cases the party plaintiff, his executors or administrators as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed or such judgment given against the plaintiff and not after: Provided always, that nothing in this section shall extend to or affect any contract, promise or agreement made and subsisting before the passing of this Act.

IV. And whereas by an Act of Parliament passed in England in the twenty first year of the reign of King James the First, and in force in this Province, intituled "An Act for limitation of actions and for avoiding of suits at Law," it was among other things enacted, that all actions of account and upon the case, other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrears of rent, should be commenced within three years after the end of the then present Session of Parliament or within six years next after the cause of such actions or suits, and not after: And whereas various questions have arisen in actions founded on simple contract as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments, and it is expedient to prevent such questions, and to make provision for giving effect to the said enactments and to the intention thereof: Be it further enacted, That in actions of debt or upon the case grounded upon any simple contract, no acknowledgment or promise by words only made after the passing of this Act shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of the said enactments of the said Act of Parliament, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby, and that where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the said enactments, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever: Provided also, that in actions to be commenced against two or more such joint contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff though barred by the recited Act of Parliament of the twenty first year of King James the First or this Act, as to one or more of such joint contractors, or executors or administrators shall nevertheless be entitled to recover against any other or others of the defendants by virtue of a new acknowledgment or promise, or otherwise judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

V. And be it further enacted, That if any defendant or defendants in any action on any simple contract shall plead any matter in abatement to the effect that any other person or persons ought to be jointly sued, and issue to be joined on such plea, and it shall appear at the trial that the action could not by reason of the said recited Act of Parliament of the twenty first year of King James the First or this Act, be maintained against the other person or persons named in such plea or any of them, the issue joined in such plea shall be found against the party pleading the same.

VI. And be it further enacted, That no endorsement or memorandum of any payment written or made after the passing of this Act upon any promissory note, bill of exchange or other writing, by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of the said recited Act of Parliament of the twenty first year of King James the First or this Act.

VII. And be it further enacted, That the said recited Act of Parliament of the twenty first year of King James the First and this Act shall be deemed and taken respectively to apply to the case of any debt alleged by way of set off on the part of any defendant either by plea, notice or otherwise, according to the nature of such debt, whether by record, specialty or simple contract.

VIII. And be it further enacted, That all parts of the world beyond the limits of this Province shall be deemed to be beyond the seas within the meaning of this Act and of the said recited Act of the Parliament of England passed in the twenty first year of the reign of King James the First, and of an Act of Parliament passed in England in the fourth year of the reign of Queen Anne and in force in this Province, intituled "An Act for the amendment of the Law and the better advancement of Justice," so far as relates to personal actions.

CAP. LII.

An Act to make provision for carrying on the affairs of the Savings Bank at Saint John.

Passed 16th March 1836.

WHEREAS in consequence of the difficulties in which the Bank for savings, established in this city of Saint John has lately been involved, it is expedient to make some further provision by Act of Assembly, for carrying on the affairs of the said institution:

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That the acting Trustees and Managers of the said institution or some two or more of them are authorized and required within two months after the passing of this Act, to call a meeting of the members of the said institution, and of any persons desirous to become members thereof, giving at least fourteen days notice in two of the newspapers published in the said city of the time and place of such meeting, and such meeting shall be deemed to be the annual meeting of the members of the said institution for the present year, under the rules and regulations for the management thereof deposited and filed in the office of the Clerk of the Peace for the city and county of Saint John, and it shall be lawful for such persons so assembled at such meeting, or at any adjourned meeting to choose Trustees and Managers, and to alter and amend the said rules and regulations, or to make new rules and regulations for the management of the said institution: Provided always that any rules and regulations so to be made shall be conformable to the provisions of an Act made and passed in the sixth year of the reign of King George the Fourth, intituled "An Act to encourage the establishment of Banks for savings in this Province," and shall be entered, deposited and filed in the manner directed in and by the said Act.

CAP. LIII.

An Act to enable the Governor and Trustees of the Madras School to dispose of certain parts of their Lands.

Passed 16th March 1836.

WHEREAS the Governor and Trustees of the Madras School in New Brunswick are seized and possessed of divers wilderness and uncultivated lands in this Province, and it is expedient when it would be for the benefit of the institution that they should have power to sell and dispose of the same, and to invest the proceeds in manner hereafter mentioned:

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That whenever it shall appear to the said Governor and Trustees to be clearly for the benefit and advantage of the institution, to sell and dispose of any of their wilderness and uncultivated lands in any part of the Province, or to sell any timber growing on such lands, that they shall be and are hereby authorized and empowered so to do, and any sale and conveyance thereof, or of any part thereof in fee simple or otherwise, made under the seal of the said Corporation, shall be good and valid, any law or usage to the contrary notwithstanding.

II. And be it enacted, That all the monies and proceeds arising from such sales, shall be invested and laid out by the said Governor and Trustees in the purchase of other lands for the purposes of the institution, or shall be put and kept out at interest upon good and sufficient landed securities, and