

the same manner as any other assessments are assessed and collected by virtue of any Act of Assembly made or to be made for that purpose in this Province.

CAP. XIII.

An Act to amend the Act for the more effectual recovery of fines imposed upon Jurors and Officers attending the Courts of Justice in this Province.

Passed 1st March 1837.

I. BE it enacted by the Lieutenant Governor, Legislative Council, and Assembly, That the second section of an Act made and passed in the sixth year of the reign of 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of fines imposed upon Jurors and Officers attending the Courts of Justice in this Province," be and the same is hereby repealed, excepting nevertheless so far as may regard the due execution of any suit of *levari facias* already issued, and the due recovery, payment, accounting for or appropriation of any monies already levied, or directed to be levied by any such writ so issued before the passing of this Act.

II. And be it enacted, That the Clerk of the Court by which any such fine or fines as are mentioned in the said Act shall have been set or imposed, shall within twenty days after the adjournment of such Court enter on a roll or list the names of the persons upon whom any fine or fines shall have been set or imposed at such Courts, and their places of residence, together with the amount of fine set or imposed upon each respectively, and shall within such time as aforesaid prepare and deliver to the Sheriff of the County wherein such Court shall have been held, a writ of general *levari facias* according to the form in the Schedule to this Act annexed, to which writ the said roll or list shall be annexed, and that it shall be the duty of the Sheriff on receipt of such writ, forthwith to levy or cause to be levied of the goods and chattels of the several persons respectively the fines mentioned in the said roll or list thereunto annexed, and to pay the amount of the said fines which may be so levied, to the Treasurer of the County, whose receipt for the same endorsed on such roll or list, shall be a sufficient discharge to the said Sheriff: Provided always, that if before the issuing of such writ, any person or persons upon whom any such fine may be set or imposed, shall tender the amount thereof to the said Clerk, such clerk shall and he is hereby authorized and required to receive and pay the same to the said County Treasurer, and he shall mark the same on the roll or list as so satisfied, and that in such case the Sheriff shall not proceed to levy on such person or persons by virtue of the said writ.

III. And be it enacted, That every Sheriff to whom any such writ of *levari facias* shall be delivered, shall be entitled to levy, recover and receive, in addition to the fine or sum mentioned in the roll or list, the sum of five shillings from each person named in such roll or list on whom a levy may be made, such sum of five shillings to be received and retained by such Sheriff in lieu of any poundage, fees or other charges to which he would be by any law or ordinance entitled, and in full of all such charges and all other charges attending such levy, the reasonable and necessary expenses attending the sale of any goods or chattels which may be levied on, alone excepted.

IV. And be it enacted, That it shall be the duty of the Sheriff, immediately on receipt of such writ, to endorse thereupon the day of the month and year on which the same was so received, and within the space of three calendar months from such day to make due return of his proceedings thereon, and to file such writ, together with the roll or list thereunto annexed, and his return thereto, with the clerk by whom the same may have been issued, or his successor in office, to remain on file in the office of such clerk, and that any Sheriff failing in the performance of the duty required by this Act, shall be considered guilty of a contempt of Court, and may for such offence be proceeded against and punished for a contempt; and it shall be the duty of such clerk to report to the Court any omission or failure of the duty required of such Sheriff by this Act.

V. And whereas the clerk of the Circuit Courts in this Province, is also clerk of the Courts of Oyer and Terminer and general gaol delivery, and such Courts are usually holden in the several Counties at the same time; and in like manner the clerks of the general sessions of the Peace are also clerks of the Interior Courts of Common Pleas of the several Counties respectively; and the Sessions are holden at the same times or terms as the said Interior Courts, and defaults are usually committed by the same persons at both the Courts so holden at the same time, it is therefore deemed unnecessary that more than one writ of *levari facias* should be issued by the clerks of the said Courts respectively at the same time; Be it enacted, that it shall and may be lawful for the clerk of the Circuit Courts, and Courts of Oyer and Terminer to include in the same roll or list, as well any fines which may be set or imposed by the Circuit Court, or Court of *nisi prius*, as the fines set or imposed by the Court of Oyer and Terminer holden at the same time and place, and to issue one writ of *levari facias* for the recovery of the same; and in like manner it shall and may be lawful for the clerks of the General Sessions of the Peace and of the Interior Courts of Common Pleas for the several Counties respectively to include in the same roll or list the fines imposed by the said Sessions, and those imposed by the Interior Courts holden at the same time and place, and to issue one writ for the recovery of the same: Provided always that nothing herein contained shall extend or be construed to authorize the imposition of any fines, except by the Judge or Judges of the Courts respectively at which the defaults or offences for which the same are imposed are committed, or to prevent the issue of several writs, should the said Courts order and direct.

VI. And be it enacted, That it shall be the duty of the Treasurers of the several Counties respectively to whom any such fines may be paid to keep the statements and accounts of the fines imposed by the Circuit Courts and Courts of Oyer and Terminer, distinct and separate from those imposed by the general Sessions and Interior Courts of Common Pleas; and in like manner it shall be the duty of the Treasurer for the County of York to keep the statement of the fines imposed by the Supreme Court or any of the Judges thereof, at any sittings for the said County, distinct and separate from those imposed by the Sessions and Interior Court of Common Pleas of the said County, and it shall further be the duty of the said County Treasurers respectively to prepare and exhibit a true and correct statement and account, verified by the oath of the said Treasurer, as well of the amount received by him for fines, as the sums paid therefrom by order of the Court imposing the same; and that such account shall be delivered on the first day of the sitting of the several Courts respectively, and remain on the files of such Court; and for the services to be performed by such County Treasurers, they shall be allowed to charge and retain two and one half per cent, or sixpence in the pound on the amounts so received for such fines; and that any County Treasurer failing in the performance of the duty required of him by this Act shall be considered guilty of a contempt of Court, and may for such offence be proceeded against and punished as for a contempt.

VII. And be it enacted, That the several successive Circuit Courts, and Courts of Oyer and Terminer sitting in and for the same County, shall for the purposes of this Act, and the Act whereto this is an amendment, be vested with the like power and authority with regard to any fines set or imposed, or orders made for the levying, receiving, paying, accounting for and appropriation thereof, at any previous Circuit Court, and Court of Oyer and Terminer, as if such fines were set or imposed, or orders made at the same Courts; although the said Courts may sit by virtue of several commissions or appointments issued or made at different times.

SCHEDULE.

William the Fourth by the Grace of God of the United Kingdom of Great Britain and Ireland, King defender of the faith. To our Sheriff of greeting: We command you that of the respective goods and chattels of all and singular the persons mentioned in the roll or list hereunto annexed, you do without delay levy or cause to be levied all and singular the fines and sums of money upon them respectively imposed and set, and in the said roll or list mentioned, together with the sum of five shillings from each of them for your service and expense in the execution of this writ, and that you do forthwith pay to the Treasurer of the said County the fines so levied, and make return hereof as by law directed. Witness

Esquire, at in the said County the day of in the year of our reign A. B. Clerk.
(To be signed by the clerk, and tested in the name of the presiding Judge or Justice, on the last day of the term, or sitting of the Court.)

CAP. XIV.

An Act for the amendment of the law and the better advancement of Justice.

Passed 1st March 1837.

I. BE it enacted by the Lieutenant Governor, Legislative Council and Assembly, That in case any defendant in any non bailable writ or process issued out of the Supreme Court, or out of any Inferior Court of Common Pleas in this Province, has a known place of abode within the jurisdiction of the Court from

which such writ or process may have issued, such writ or process may be served at the usual place of abode of such defendant, by delivering a copy of the writ or process, with any requisite notice, to the wife of such defendant or to an adult person residing in the House, being a member or inmate of the family of such defendant; provided that such service shall not be deemed good service without the order of the Court out of which the writ or process issued, or a Judge thereof, upon affidavit shewing to the satisfaction of such Court or Judge the circumstances of such service, and that the place where the writ or process was served was at the time of such service the usual place of abode of such defendant.

II. And be it enacted, That if any writ of summons shall be sued out against any Corporation, and such Corporation should not cause an appearance to be entered at the return of such writ, or within twenty days after such return, in every such case it shall and may be lawful for the plaintiff or plaintiffs in the action, upon affidavit being made and filed in the proper Court of the due service of such writ to enter an appearance for such Corporation and to proceed thereupon in like manner as in personal actions against individuals.

III. And be it enacted, That a defendant who shall have been held to bail upon any mesne process issued out of the Supreme Court in this Province may be rendered in discharge of his bail to the Common Gaol of any County in which he may be, and the render to such County Gaol shall be effected in manner following, (that is to say,) the defendant or his bail, or one of them, shall for the purpose of such render obtain an order of a Judge of the said Court, and shall lodge such order with the gaoler of such gaol to which the render may be made, and a notice in writing of the lodgment of such order and of the defendants being actually in custody of such gaoler by virtue of such order signed by the defendant or the bail or either of them, or by the Attorney of either of them, shall be delivered to the plaintiff's Attorney, and the Sheriff of such County shall on such render so perfected be duly charged with the custody of such defendant, and the said bail shall be thereupon wholly exonerated from liability as such: Provided always, that in any County in which there may not be a Judge of the said Court at the time of any render so to be made, an order for such render may be obtained from any commissioner for taking bail in such Court for such County, which order such commissioner is hereby authorized in such case to grant.

IV. And be it enacted, That a defendant who shall hereafter be in custody of any Sheriff by virtue of any legal process, may be rendered in discharge of his bail in any action depending in the said Supreme Court, in the manner hereinbefore provided for a render in discharge of bail; and such Sheriff shall on such render be duly charged with the custody of such defendant, and the said bail shall be thereupon wholly exonerated from liability as such.

V. And be it enacted, That the provisions hereinbefore contained, in respect to rendering defendants in discharge of their bail, shall extend and apply to the several Inferior Courts of Common Pleas in this Province with regard to actions depending in those Courts respectively; and that any Judge of any such Inferior Court of Common Pleas, or any commissioner for taking special bail in such Courts, may make an order for the render of any defendant held to bail upon any mesne process issued out of the Court of which he is a Judge or Commissioner to the gaol of the County for which such Courts sit, and such and the like proceedings shall be had thereupon as is hereinbefore provided in regard to actions depending in the Supreme Court.

VI. And be it enacted, That in all actions of debt the amount to be recovered in case of judgment by default or on demurrer shall be ascertained and assessed either by the Court or a jury before judgment is signed, and that the provisions of an Act passed in the twenty sixth year of the reign of King George the third, intituled "An Act to prevent unnecessary expense in actions on the case or judgments by default," and of an Act passed in the fifth year of the reign of His present Majesty, intituled "An Act to provide for the more convenient administration of justice in the Supreme Court," so far as the same relate to the assessment of damages shall extend and be construed to apply to actions of covenant for the payment of any certain sum or sums of money, and to actions of debt; and that as well in such actions as in actions on the case where judgment is given for the plaintiff on demurrer, the damages may be assessed in the same manner as in cases where the judgment is by default: Provided always that nothing herein contained shall extend to actions upon bonds conditioned for the payment of a single sum of money not by instalments.

VII. And whereas great expense is often incurred, and delay or failure of justice takes place at trials by reason of variances as to some particular or particulars between the proof and the record or setting forth on the record or document on which the trial is had, of contracts, customs, prescriptions, names and other matters or circumstances not material to the merits of the case, and by the mis-statement of which the opposite party cannot have been prejudiced, and the same cannot in any case be amended at the trial, except where the variance is between any matter in writing or in print produced in evidence and the record: and whereas it is expedient to allow such amendments as hereinafter mentioned to be made or the trial of the cause; Be it therefore enacted, That it shall be lawful for the Supreme Court or any Judge thereof sitting at *nisi prius* or any Inferior Court of Common Pleas, if such Court or Judge shall see fit so to do, to cause the record, writ or document on which any trial may be pending before any such Court or Judge in any civil action, or in any information in the nature of a *quo warranto*, or proceedings on a mandamus in the Supreme Court, when any variance shall appear between the proof and the recital or setting forth on the record, writ or document on which the trial is proceeding, of any contract, custom, prescription, name or other matter in any particular or particulars in the judgment of such Court or Judge not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, prosecution or defence, to be forthwith amended by some officer of the Court or otherwise, both in the part of the pleadings where such variance occurs, and in every other part of the pleadings which it may become necessary to amend, on such terms as to payment of costs to the other party or postponing the trial to be had before the same or another jury, or both payment of costs and postponement as such Court or Judge shall think reasonable; and in case such variance shall be in some particular or particulars in the judgment of such Court or Judge not material to the merits of the case, but such as that the opposite party may have been prejudiced thereby in the conduct of his action, prosecution or defence, then such Court or Judge shall have power to cause the same to be amended upon payment of costs to the other party, and withdrawing the record or postponing the trial as aforesaid, as such Court or Judge shall think reasonable; and after any such amendment the trial shall proceed in case the same shall be proceeded with, in the same manner in all respect, both with respect to the liability of witnesses to be indicted for perjury and otherwise as if no such variance had appeared; and in case such trial shall be had at *nisi prius*, the order for the amendment shall be endorsed on the postea or the writ, as the case may be, and returned together with the record or writ, and thereupon such papers, rolls and other records as it may be necessary to amend shall be amended accordingly; provided that it shall be lawful for any party who is dissatisfied with the decision of any

Judge of the Supreme Court at *nisi prius* respecting his allowance of any such amendment to apply to the Court in banc for a new trial upon that ground, and in case such Court shall think such amendment improper a new trial shall be granted accordingly on such terms as the Court shall think fit, or the Court shall make such other order as to them may seem meet.

VIII. And be it enacted, That the said Court or Judge shall and may if they or he think fit, in all such cases of variance, instead of causing the record or document to be amended as aforesaid, direct the jury to find the fact or facts according to the evidence, and thereupon such finding shall be stated on such record or document, and notwithstanding the finding on the issue joined the said Court or the Court from which the record has issued, shall if they shall think the said variance immaterial to the merits of the case, and the mis-statement such as could not have prejudiced the opposite party in the conduct of the action or defence, give judgment according to the very right and justice of the case.

IX. And be it enacted, That it shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term or at will for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime.

X. And be it enacted, That such arrearages may be distrained for after the end or determination of such term or lease at will, in the same manner as if such term or lease had not been ended, or determined: Provided that such distress be made within the space of six calendar months after the determination of such term or lease and during the continuance of the possession of the tenant from whom such arrears became due: Provided also that all and every the powers and provisions in the several Acts of Assembly made relating to distresses for rent shall be applicable to the distresses so made as aforesaid.

XI. Whereas it is expedient to provide by Act of Assembly for the due payment of certain arrears of rent to the landlord out of goods and chattels liable to be taken by execution; Be it enacted, That no goods or chattels whatsoever lying or being in or upon any messuage, lands or tenements which are or shall be leased for life or lives, term of years, at will or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever unless the party at whose suit the said execution is sued out shall before the removal of such goods from off the said premises by virtue of such execution pay to the landlord of the said premises or his bailiff all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution: Provided the said arrears do not amount to more than one year's rent; and in case the said arrears shall exceed one year's rent then the said 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 to whom such execution may have been delivered to be executed is hereby empowered and required in such case to levy and pay to the party at whose suit the said execution is sued out, as well the money so paid for rent as the money directed to be levied on such execution.

XII. Provided always and be it enacted, That nothing in the foregoing section contained shall be construed to extend to hinder or prejudice His Majesty, his heirs or successors in the levying, recovering or seizing any debts, fines, penalties or forfeitures due or payable to His Majesty, his heirs or successors, but that it shall and may be lawful for His Majesty, his heirs and successors to levy, recover and seize such debts, fines, penalties or forfeitures in the same manner as if this Act had never been made.

XIII. And be it enacted, That all proceedings which may have been at any time heretofore taken by any landlord or landlords, Sheriff or other officer under and by virtue of and in due conformity to the first section of an Act of Parliament passed in England in the eighth year of the reign of Queen Anne, intituled "An Act for the better security of rents and to prevent frauds committed by tenants," are hereby ratified and confirmed, and the same are hereby declared to be as good valid and effectual in the law to all intents and purposes as if the said Act of Parliament had been expressly extended to this Province or specifically re-enacted in the same previous to such proceedings.

XIV. And whereas there is no remedy provided by law for injuries to the real estate of any person deceased committed in his lifetime nor for certain wrongs done by a person deceased in his lifetime to another in respect of his property real or personal; for remedy thereof, Be it enacted, That an action of trespass or trespass on the case, as the case may be, may be maintained by the executors or administrators of any person deceased for any injury to the real estate of such person committed in his lifetime, for which an action might have been maintained by such person, so as such injury shall have been committed within six calendar months before the death of such deceased person, and provided such action shall be brought within one year after the death of such person; and the damages when recovered shall be part of the personal estate of such person; and further that an action of trespass or trespass on the case, as the case may be, may be maintained against the executors or administrators of any person deceased for any wrong committed by him in his lifetime to another in respect of his property real or personal, so as such injury shall have been committed within six calendar months before such person's death, and so as such action shall be brought within six calendar months after such executors or administrators shall have taken upon themselves the administration of the estate and effects of such person; and the damages to be recovered in such action shall be payable in like order of administration as the simple contract debts of such person.

XV. And be it enacted, That no plea in abatement for the nonjoinder of any person as a co-defendant shall be allowed in any Court in this Province, unless it shall be stated in such plea that such person is resident within the Province, and unless the place of residence of such person shall be stated with convenient certainty in an affidavit verifying such plea.

XVI. And be it enacted, That in all cases in which after such plea in abatement the plaintiff shall without having proceeded to trial upon an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement, as joint contractors, if it shall appear by the pleadings in such subsequent action, or on the evidence at the trial thereof that all the original defendants are liable, but that one or more of the persons named in such plea in abatement or any subsequent plea in abatement are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment or to a verdict and judgment, as the case may be, against the other defendant or defendants who shall appear to be liable; and every defendant who is not so liable shall have judgment, and shall be entitled to his costs as against the plaintiff who shall be allowed the same as costs in the cause against the defendant or defendants who shall have so pleaded in abatement the nonjoinder of such person; Provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement.

(To be Continued in next Gazette.)