

"THE JUDICATURE ACT, 1889," RULES OF COURT AND FORMS.

CHAPTER 50 OF THE CONSOLIDATED STATUTES, [SECOND SERIES.]

Of the Supreme Court and Procedure therein.

SECTION	SECTION
1.—Short title.	29-34.—Commissioners of Affidavits, &c.
2-12.—Constitution, jurisdiction and powers of Court and Judges.	35.—Trial and procedure.
13.—Rules of Law.	36-50.—Arbitration.
14-15.—Sittings and distribution of business.	51-67.—Attachment for debt.
16.—Northern and Southern Circuits.	68-73.—Imprisonment for debt.
17-20.—Criminal jurisdiction, powers, &c., of Court on Circuit.	74-89.—Partition.
21.—Removal of prisoners from one gaol to another.	80-135.—Costs.
22.—Rules <i>nisi</i> from Circuit to be heard in St. John's.	136-142.—Proceedings for recovery of claims <i>ex contractu</i> against the Government.
23.—Judge on Circuit may try without jury.	143-145.—Inferior Courts.
24-27.—Chief Clerk and Assistant Clerks.	146-148.—Pleadings and Practice.
28.—Crier and Tipstaff.	149-153.—Rules of Court.
	154-155.—Interpretation.
	Schedules.

1. This chapter may be cited as "The Judicature Act, 1889."

CONSTITUTION, JURISDICTION AND POWERS OF THE SUPREME COURT AND THE JUDGES THEREOF.

2. The Supreme Court of Newfoundland shall have all civil and criminal jurisdiction whatsoever, conferred by the Imperial statute passed in the fifth year of the reign of His late Majesty, King George the Fourth, entitled "An Act for the better administration of Justice in Newfoundland, and for other purposes," and by the Royal Charter or Letters Patent under the great Seal, issued by virtue of the said statute, dated the nineteenth day of September, in the sixth year of His said Majesty's reign, and by any law in force in this colony. The said Court is also declared to be a Court of Admiralty, in pursuance of the Imperial Act 53 and 54 Victoria, entitled "An Act to amend the law respecting the exercise of Admiralty in Her Majesty's Dominions and elsewhere out of the United Kingdom," and with the powers and jurisdiction conferred by the said Act.

3. The Supreme Court shall continue to be composed, as at present, of a Chief Justice and two other Judges, to be appointed when vacancies may occur, as heretofore, or as may hereafter be provided by Her Majesty, and who shall be resident Barristers of the colony of at least ten years'

standing; and the said Judges shall respectively have and exercise the like privileges, powers and authorities in Newfoundland and its dependencies, as are prescribed by the Act, Charter and laws aforesaid.

4. The Supreme Court may be held by one Judge, who may hear and determine all matters, except cases of treason and capital felony, motions for new trials, motions in arrest of judgment, re-hearings, appeals, special cases, and transfers in matters of administration and probate, when at least two Judges shall be present: Provided that in these and in any other cases in which two Judges so sitting shall differ in opinion, the matter shall be reheard as soon as conveniently may be, by the three Judges, and the judgment of any two shall be the judgment of the Court; and provided further, that nothing herein contained shall prevent the preferring and finding of any bill of indictment or any other proceeding, incident to the charge of treason or capital felony, before less than two Judges, save the actual trial and sentence in such cases.

5. In term when it may conveniently be done, the Judges or any of them, may, as the Supreme Court, sit apart and separately from the other or others, at the same time, for the trial and determination of any matter which may be heard and determined by one or two Judges, as the case may be; and the rising or adjournment of any one or more Judges, shall not affect the sitting of the remainder

6. Any Judge of the said Court may, subject to any rules of Court, exercise in Court or in chambers all or any part of the jurisdiction by this Act vested in the said Court, in all such causes and matters, and in all such proceedings in any causes or matters as before the passing of this Act might have been heard in Court or in chambers, respectively, by a single Judge of the said Court, or as may be directed or authorized to be so heard by any rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute the Court, and two or more Judges may sit separately at such Court at the same time.

7. In like manner two or three Judges may sit at any time out of term, and exercise the jurisdiction which such numbers respectively might have exercised prior to this Act, and under this Act and the rules thereunder.

8. In cases of urgency arising from absence, illness, or other cause, or the vacancy in the office of any Judge of the Supreme Court, it shall be lawful either in term or vacation or in Chambers for another Judge to sit for the first-named Judge or with another or others, as the case may be, and to hear and dispose of any cause or matter by the first-named judge partly heard, and to use the evidence which may have been taken by or before such first-named judge.

9. Every judgment, finding or order of a single judge, in court or chambers, may be reviewed, varied or set aside by the court constituted

by any two or by the three judges, subject, in cases in which two only sitting shall differ in opinion, to re-hearing and determination before the three judges.

10. Where two judges sit together in the first place and join in any judgment or order, the decision shall be final and absolute unless by their leave; but, if they differ in opinion, application may be made to the three judges to review, vary or set aside such judgment or order.

11.—It shall not be necessary, upon application for a new trial of a case tried by a judge without a jury, that the same should be tried again, but the case may be finally disposed of, as to damages as well as other matters, upon the evidence already taken, with or without further evidence or re-examination. Where a case has been tried by jury it may, with consent of parties, be finally disposed of in manner aforesaid.

12. The Chief Justice may hold the office of Administrator of the Government of this Colony, with the emoluments and fees to the said office belonging.

RULES OF LAW.

13. In every civil cause or matter commenced in the Supreme Court, Law and Equity shall be administered according to the rules following:—

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief, upon any equitable ground, against any deed, instrument or contract, or against any right, title, or claim whatever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given in equity, the said Court, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given in a suit or proceeding in equity for the same or the like purpose properly instituted before the passing of this Act.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief, upon any equitable ground, against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Court, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court ought to have given if the same or the

like matters had been relied on by way of defence in any suit or proceeding instituted in that Court in equity for the same or the like purposes before the passing of this Act.

- (3.) The said Court, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Court, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any rule of Court, or any order of the Court, as might have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.
- (4.) The said Court, and every Judge thereof, shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court in Equity would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.
- (5.) No cause or proceeding shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable the Court from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce by attachment or otherwise any judgment, decree, rule or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken,

shall be at liberty to apply by motion, in a summary way, for a stay of proceedings in such cause or matter, either generally or so far as may be necessary for the purposes of justice, and such order shall thereupon be made as shall be just

- (6.) Subject to the foregoing and any other provisions of existing law, all legal claims and demands, and all estates, titles, rights, duties, obligations and liabilities existing by the common law or custom, or created by statute, shall be recognized and given effect to by the said Court and Judges, as they would have been prior to the commencement of this Act.
- (7.) In every cause or matter, the Court and Judges shall grant either absolutely or on such reasonable terms and conditions as shall seem just, all such remedies whatsoever, as any of the parties thereto may appear to be entitled to, in respect of any and every legal or equitable claim properly brought forward in such cause or matter, so that as far as possible all matters so in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any such matters avoided.
- (8.) No claim of a *cestui que trust* against his trustee, for any property held on any express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations.
- (9.) An estate for life without impeachment of waste shall not confer, or be deemed to have conferred, upon the tenant for life, any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.
- (10.) There shall not be any merger, by operation of law only, of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.
- (11.) A mortgagor entitled for the time being to the possession or the receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof, shall have been given by mortgagees, may sue for such possession, or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract, made by him jointly with any other person, and in that case he may sue or distrain jointly with such other person.
- (12.) In case of an assignment of a debt or other chose in action, if the debtor, trustee, or other person liable in respect of such

debt or chose in action, shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled if he think fit, to call upon the several persons making claim thereto, to interplead concerning the same, or he may, if he thinks fit, pay the same into the Supreme Court, upon obtaining a Judge's order therefor, to abide the determination of the Supreme Court in respect thereof.

- (13.) Stipulations in contracts, as to time or otherwise, which would not, before this Act came into operation, have been deemed to be, or to have become, of the essence of such contracts, in a Court of Equity, shall receive in the Supreme Court the same construction and effect as they would previously thereto have received in Equity.
- (14.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in the Courts of Common Law, shall prevail.
- (15.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estate claimed by both or by either of the parties are legal or equitable.
- (16.) In all questions relating to the custody and education of infants, the rules of equity shall prevail.
- (17.) Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of common law, the rules of equity shall prevail.

SITTINGS AND DISTRIBUTION OF BUSINESS.

14. There shall be at least two terms, or sessions, of the Supreme Court holden at the town of St. John's in every year, the first whereof

shall commence on the twentieth day of May, and continue thence until the tenth day of June, and the second whereof shall commence on the twentieth day of November, and continue thence until the twentieth day of December: Provided that if either of the days of commencement, or of the close of any term shall fall upon a Sunday, then the Monday following shall be the first or last day of such term, as the case may be; and the Court may prolong either of the said terms, by adjournment, for a further period not exceeding six days, unless any cause shall be actually in the course of trial on the sixth day, when the Court may sit until the trial and adjudication shall have terminated. There shall be post-terminal sittings, to continue for one week, at least, from and after the first Mondays in February, March, April and July in each year.

15. Anything in the foregoing section notwithstanding, the Governor may, at any time, by proclamation, direct a term or session of the said Court to be holden, with all the powers of the Court sitting during the terms so as aforesaid established. When it shall happen that any business pending during any term provided for by such proclamation, shall not be concluded at the time appointed for the opening of any of the terms or sittings of the Supreme Court, provided for by the 14th section of this Act, such business may be continued into such term, and concluded therein, in like manner as if the same had been commenced in either of the terms provided for by the said last-named section. Notwithstanding anything contained in the 14th section of this Act, a term or session of the Supreme Court, directed by proclamation, may be held during the whole or any part of the periods during which post-terminal sittings are directed to be held.

CIRCUITS OF THE SUPREME COURT.

16. There shall be circuits of the Supreme Court held in the northern and southern districts of this colony, at such times and places, and under such conditions, as the Governor, by proclamation, shall from time to time appoint. Each circuit shall be presided over by one of the Judges in rotation, unless they shall otherwise arrange.

17.—All persons charged with crimes cognizable by the Supreme Court in St. John's, before one Judge, may be tried anywhere before the Supreme Court on Circuit, although the alleged offence may have been committed outside of the territorial limits of such circuit.

18. In criminal cases the Judge sitting in the Supreme Court on Circuit may reserve questions for argument, or direct motions in arrest of judgment, to be heard before the Supreme Court in St. John's, where the decision shall be final and of the same effect as if the case had been originally instituted there.

19. In criminal and civil causes and matters on Circuit, witnesses shall be liable to be summoned from any part of the Colony and its de-

pendencies, in the same manner, and with like effect, as if they were within the limits of the Circuit.

20. The Supreme Court on Circuit, before which any person shall be convicted of any offence, and upon such conviction shall be sentenced to imprisonment, with or without hard labour, or any Judge thereof, may order and direct that the whole or any portion of such imprisonment shall take place in any gaol or prison in this Island, although the same may not be within the limits of the Circuit; and a certified copy of the sentence of the Court, or of any order for such imprisonment, under the hand of a Judge or the Clerk of such Court, shall be a sufficient warrant and authority to all sheriffs, gaolers and constables, respectively, for the removal from one district to another of any such convict, and for the carrying into execution of such sentence of imprisonment or order, as the case may be.

21. At any time after sentence a prisoner may, by order of the Governor or a Judge of the Supreme Court, be removed from one gaol to another, when and as often during the currency of the sentence as may be deemed expedient for the ends of justice.

22. Any party to any action or suit on Circuit shall have a rule *nisi* on all points raised by such party, returnable before the Supreme Court in St. John's at its next sitting there; or may have a special case, demurrer, probate or equity suit, or any information, action or suit relating to the revenue reheard: Provided that the presiding Judge may require sufficient security to abide the final judgment and costs.

23. In any action in the Supreme Court on Circuit, if a jury cannot be had for the trial of the cause, the presiding Judge shall have power to try the same without a jury: Provided that the judgment of such presiding Judge shall be subject to review by the Supreme Court in Saint John's upon rule for a new trial, non-suit, or otherwise, in the same manner in all respects as the verdict of a jury, subject to such condition as the presiding Judge may think just.

OFFICERS OF THE SUPREME COURT.

24. There shall be a Chief Clerk and Registrar of the Supreme Court at St. John's, to be appointed by the Governor in Council, who shall perform such duties as are performed by the Master, Registrar, Accountant-General, or Prothonotary of the Supreme Court of Judicature in England, or by such officers as now in such Court perform those duties, and all other such duties as the Chief Clerk and Registrar has been in the habit of performing and now performs: Provided that the said Chief Clerk and Registrar shall not, whilst in the occupation of the said office, practice or act as Barrister, Attorney, Advocate, Solicitor, Proctor, Conveyancer, or Notary Public, or demand or receive any fee or compensation in connection with the last-mentioned offices.

25. The Chief Clerk and Registrar of the Supreme Court shall give such security as shall be approved of by the Supreme Court, for the safe keeping of and accounting for all monies paid into his hands by order of the Court.

26. The Governor in Council may appoint Assistant Clerks of the Supreme Court, who shall have power, in the absence of the Chief Clerk of the said Court, and at such other times as shall be declared necessary by the Supreme Court under general rules, to discharge the duties of the office of the said Chief Clerk; and the duties heretofore performed by the Clerks of the Supreme Court on Circuit may be discharged by the said Assistant Clerks, or any of them.

27. The said Assistant Clerks shall give such security for the faithful performance of their duties, as shall be approved of by the Supreme Court.

28. There shall be a Crier and Tipstaff of the Supreme Court, whose appointment shall be in the Judges.

29. There shall be Commissioners of the Supreme Court for taking affidavits, for issuing mesne process, and for taking bail within this Island and its dependencies, who shall be appointed under the seal of the Supreme Court and under the hand of the Chief Justice, or, in his absence, of the senior Judge.

30. It shall be lawful for the Chief Justice, and, in his absence, for the Senior Judge of the Supreme Court, to grant and cause to be issued, under the seal of the said Court, Commissions, addressed to persons resident in any place without the jurisdiction of the said Court, authorising and empowering such persons to administer oaths, and to take affidavits, solemn affirmations, statutory declarations, and acknowledgments of deeds and other documents, for use or proof within this island and its dependencies, and to do and perform all and singular the acts, matter and things, which are now within the authority of a Commissioner of affidavits residing within the jurisdiction aforesaid, save and except the issue of process.

31. A Commissioner appointed by virtue of the foregoing section, before acting in anywise under the said Commission, shall make a declaration before a Notary Public, or before the Mayor, Chief Magistrate, British Consul, Vice-Consul or Consular Agent, of or near the city, borough or place, where such Commissioner resides, who shall certify the same under his hand and seal, which declaration shall be in the handwriting of the Commissioner, and subscribed by him, and shall be in the form as in the schedule A hereto appended; and such certificate and declaration shall, within three months of such appointment, and prior to the judicial recognition of any of the acts of such Commissioner, be filed in the office of the Chief Clerk and Registrar of the Supreme Court.

32. When such declaration and certificate shall have been filed, as aforesaid, all acts, matters and things done by such Commissioner, by virtue of such appointment, shall be sufficiently verified by his signature, without further proof or authentication, as fully as if the said Commissioner were residing within the jurisdiction of the said Court.

33. The provisions of the four preceding sections of this chapter, as to proof and acknowledgment of deeds, conveyances and other assurances, shall be construed as cumulative with section eight of chapter 80 of these Consolidated Statutes, entitled "Of the Registration of Deeds," and not as in anywise repealing the same or conflicting therewith.

34. The fees to be taken by Commissioners abroad shall be as in the schedule B, hereto appended.

TRIAL AND PROCEDURE.

35. Subject to rules of Court, the trials and procedure in all causes, whether of a legal or equitable nature, shall be as nearly as possible the same, and the following provisions shall prevail:—

- (1) In actions of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, the plaintiff may, in his notice of trial, and the defendant may, upon giving notice within two days from the time of the service of notice of trial, or within such extended time as the Court or a Judge may allow, signify his desire to have the issue of fact tried by a Judge with a jury, and thereupon the same shall be so tried.
- (2) Causes or matters which, before the passing of this Act were heard or determined by or before the Equity side of the Supreme Court, shall be tried and determined by a Judge without a jury, unless the Court or a Judge shall otherwise order.
- (3) The Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of this Act could, without consent of parties, have been tried without a jury.
- (4) The Court or a Judge may direct the trial without a jury, of any cause, matter or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their or his opinion, conveniently be made with a jury.
- (5) In any other cause or matter, upon the application within two days after notice of trial has been given, of any party thereto,

for a trial with a jury of the cause or matter or any issue of fact, an order shall be made for a trial with a jury.

- (6.) In every cause or matter, unless under the provisions of sub-section (5) of this section a trial with a jury is ordered, or under sub-section (1) of this section either party has signified a desire to have a trial with a jury, the mode of trial shall be by a Judge without a jury: Provided that in any such case the Court or a Judge may at any time order any cause, matter, or issue to be tried by a Judge with a jury.
- (7.) The verdict or finding of the Judge, by whom any issue is tried or damages assessed, shall have the like effect as the finding of a jury.
- (8.) Where, in any action both legal and equitable issues are raised, they shall be heard and tried at the same time, unless the Court or a Judge thereof, or the Judge presiding at the trial, otherwise directs.
- (9.) Where, upon the trial of any action, any question of fact or of law arises for the determination of the presiding Judge, he may, of his own motion, or by consent of parties, reserve the giving of his final decision on the question so raised to a future day, not later than sixty days from the day of such reservation, and his decision, whenever given, shall be considered as if given at the time of the trial. Such decision shall be filed with the Clerk of the Court where the cause was tried, and it shall be the duty of the Clerk immediately to give notice in writing to all the parties to the cause or their respective attorneys, that such decision has been filed, and each of the parties shall have and exercise, within twenty days from the service of such notice, all such rights as he possessed or might have had or exercised if judgment had been given on the trial of the cause.
- (10.) Upon any trial by a jury, where the Court or the presiding Judge otherwise directs, it shall not be lawful for such jury to give a general verdict, and it shall be the duty of such jury to give a special verdict if the Court or presiding Judge so directs; and unless the Court or the presiding Judge otherwise directs, the jury may give either a general or a special verdict, but this sub-section shall not apply to actions of libel.
- (11.) Upon a trial by jury, in any case except an action for slander, libel, malicious prosecution, false imprisonment, or breach of promise of marriage, the Judge, instead of directing the jury to give either a general or special verdict, may direct the jury to answer any questions of fact stated to them by the Judge for the purpose; and in such case the jury shall answer such

questions, and shall not give any verdict, and on the finding of the jury upon the questions which they answer, the Judge shall enter the verdict, and the verdict, so entered, shall be as effectual as if the same had been the verdict of the jury. And on the trial of any such case counsel may require the Judge presiding to submit to the jury any pertinent or relevant question raised by any of the issues or necessary to be answered by the jury in order to a complete determination of all matters involved in the case; and in the event of any presiding Judge refusing to put to the jury any question required by counsel to be so submitted, such refusal may be used as a ground for a new trial.

- (12.) Subject to the provisions of the preceding sub-sections of this section, the Court or a Judge may, in any cause or matter, at any time, or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one or more issues of fact be tried before any other or others.
- (13.) Nothing in this section or sub-sections shall affect any proceedings under any of the provisions of chapter twenty of the Consolidated Statutes (first series), relating to arbitration.

ARBITRATION.

36. If it be made to appear at any time after the issuing of the writ, to the satisfaction of the Court or a Judge, upon the application of any party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, the Court or Judge may, upon such application, if they or he think fit, decide such matter in a summary manner, or order that such matter either wholly or in part be referred to one or more arbitrators appointed by the parties, or if the parties cannot agree in the choice of arbitrators, to an officer of the Court, or some other person or persons, upon such terms as to costs and otherwise as the Court or Judge shall think reasonable; and the decision or order of the Court or Judge, or the award or certificate of such referee or referees, shall be enforceable by the same process as the finding of a jury upon the matter referred.

37. If it shall appear to the Court or a Judge that the allowance or disallowance of any item in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury, or by a judge, the Court or Judge may direct a case to be stated, or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator or officer as conclusive.

38. The arbitrator or officer, upon any compulsory reference under this chapter, or upon any reference by consent of parties, where the submission is or may be made a rule or order of the Court, may, if he shall think proper, and if it be not provided to the contrary, state his award as to the whole or any part thereof, in the form of a special case, for the opinion of the Court; and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the Court.

39. If, upon the trial of any issue of fact by a Judge under this chapter, it shall appear to the Judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, he may, at his discretion, order that such matter of account be referred to an arbitrator or arbitrators appointed by the parties, or in the event of their disagreement, as aforesaid, to an officer of the Court, or some other person or persons, upon such terms as to costs and otherwise as such Judge shall think reasonable, and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and the Judge may proceed to try and dispose of any other matter in question not referred in like manner as if no reference had been made.

40. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner and subject to the same rules and enactments as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of Court or a Judge's order.

41. In any case where reference shall be made to arbitration as aforesaid, the Court or Judge may, at any time, and from time to time, remit the matters referred, or any or other of them, to re-consideration and re-determination of the said arbitrator, upon such terms as to costs and otherwise as to the Court or Judge may seem proper.

42. All applications to set aside any award made on a compulsory reference under this chapter, shall be made within seven days after publication of the award to the parties, whether made in vacation or term; and if no such application be made, or if no rule be granted thereon, or if any rule granted thereon be afterwards discharged, such award shall be final between the parties.

43. Whenever the parties to any deed or instrument in writing, or any of them, have agreed or shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person claiming through or under him, shall nevertheless commence an action at law or suit in equity against the other party or parties or any of them, or against

any person claiming through or under him or them or any of them, the Court or a Judge may, on application by the defendant or defendants, or any of them, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of bringing such action or suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to directing a reference as hereinbefore provided as to the Court or Judge may seem fit; provided that any rule or order may at any time afterwards be discharged or varied as justice may require

44. If in any case of arbitration the document authorizing the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, or if any appointed umpire or arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one, then and in every such instance any party may serve the remaining parties or arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator, respectively; and if within seven clear days after such notice shall have been served, no arbitrator, umpire, or third arbitrator be appointed, a Judge of the Supreme Court may, upon summons to be taken out by the party having served such notice as aforesaid, appoint an arbitrator, umpire, or third arbitrator, as the case may be; and such arbitrator or third arbitrator, respectively, shall have a like power to act in the reference and make an award as if he had been appointed by consent of all parties

When the reference is or is intended to be to two arbitrators, one appointed by each party, either party, in case of the death, refusal to act, or incapacity of any arbitrator appointed by him, may substitute a new arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied; and if, on such a reference, one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties, as if the appointment had been by consent: provided,

however, that the Court or a Judge may revoke such appointment on such terms as shall be deemed just

45. When the reference is to two arbitrators, and the terms of the document authorizing it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner.

46. The Court or a Judge may, upon sufficient cause, and from time to time extend the time for making any award under this chapter, notwithstanding that the time originally fixed may have elapsed.

47. When any award made on any such submission, document, or order of reference aforesaid directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party either forthwith or at any future time, or that any such party is entitled to the possession of any such lands, or tenements, the Court may order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference, to deliver possession of the same to the party entitled thereto pursuant to the award; and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue and possession shall be delivered by the Sheriff, as on a judgment in ejectment.

48. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of Court, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of Court.

49. The power and authority of any arbitrator or umpire shall not be revocable by any party to the reference without leave of the Court or a Judge, and the arbitrator or umpire shall and is hereby required to proceed with the reference notwithstanding any such revocation, and to make such award, although the person making such revocation do not afterwards attend the reference.

50. Where a compulsory reference to arbitration has been ordered, any party to such reference may appeal from the award or certificate of the arbitrator upon any question of law; and on the application of any party the Court may set aside the award on any ground on which the Court might set aside the verdict of a jury. The Court or Judge shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or referee, or make any

order with respect to the award or certificate, or all or any of the matters in dispute as may be just.

ATTACHMENT FOR DEBT.

51. An original writ of attachment may issue out of the Supreme Court upon the filing of a sufficient affidavit, to be made by the plaintiff, or some one on his behalf, shewing the defendant to be justly and truly indebted to the plaintiff in a liquidated amount of twenty dollars or upwards, in a cause of action to be therein set forth; but the Court or a Judge thereof may authorize the issuing of a writ of attachment where the debt or damages are unliquidated, upon sufficient cause to be shewn in that behalf.

52. No property, debts or effects, regularly attached under original alias or pluries writs of attachment, shall be released except by the termination of the suit in favor of the defendant, or otherwise by operation of law, until the defendant, or some one on his behalf, shall have given bond with two sufficient sureties to the Sheriff in double the sum sworn to, conditioned as in the form in schedule C, or until he have deposited with the Sheriff, to abide the order of the Court in the cause, an amount equal to the sum sworn to, and such amounts for costs as is hereafter provided.

53. Such bail-bond shall stand and be security to the plaintiff to abide the final judgment in the cause; and upon a breach occurring in the condition thereof, the same shall be assigned by the Sheriff to the plaintiff, who may sue thereon in his own name; and if by reason of the insufficiency of such bond, or of the sureties therein, the plaintiff shall fail to recover the amount of the sum sworn to, and such further sum for costs as aforesaid, or the value of the property attached, he may recover any deficiency in such amounts in an action on the case against the Sheriff.

54. When the goods or effects attached under any process of the said Court shall be of a perishable nature, or be such as either from the expense of holding the same, or from other circumstances, may considerably deteriorate in value before judgment can be obtained in the action or suit in which such goods or effects may have been attached, and good and sufficient bail to satisfy the judgment, order, or decree of the said Court shall not have been put in by the defendant or defendants, the Court or a Judge thereof may, on the application of any plaintiff or defendant, order the immediate appraisement and sale of such goods or effects, or of a sufficiency thereof to satisfy the debt and costs, and direct the proceeds thereof to be paid into Court, to abide the further order, judgment, or decree of the Court in such action or suit.

55. So often as any goods, debts or effects of any defendant in any action or suit now pending or hereafter to be brought in the said Court,

have been or shall be attached in the hands of any third person, such goods, debts or effects shall be paid into Court or delivered to the Sheriff, as the case may be, to abide the order, judgment or decree of the said Court; and for the purpose of ascertaining the nature and amount of such goods, debts or effects, the Court or a Judge thereof may, on the application of either party to the suit, summon such third person, or his agent, or, in case of a corporation or company, an officer thereof, to appear before such Court or Judge, or an officer of the Court, to be examined upon oath, or cause such third person to be examined on oath, under rule, order or commission, and thereupon make order for the payment into Court, or delivery to the Sheriff, as the case may be, of such goods, debts or effects, and for the realization by the master, or an officer of the Court, by action or suit (if necessary), in his own name or otherwise, of such effects as may consist of choses in action, and enforce such order by process of contempt, or by execution against the garnishee, to levy the amount due from or obtain delivery of the property, or the value thereof, in the hands of such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order: Provided that no such attachment as aforesaid shall be deemed to operate on or to affect any contract executory, upon which at any day after the service of the warrant of attachment any sum of money shall or may accrue or become payable to any defendant for or on account of any work, labour, or service to be executed, performed, or completed by such defendant at any time after the service of such warrant of attachment upon the bailee; nor upon any moneys, goods, debts, or effects, in and over which such defendant shall not have at the time of the service of such warrant of attachment a then present interest and disposing power.

56. When any debt which has been or shall be so attached as aforesaid shall be payable in goods to be specified by the defendant, to whom such debt shall be owing, and such defendant shall neglect or refuse to specify the same previously to or at the time of such examination as aforesaid, such goods to the amount of the debt so attached shall be delivered to the Sheriff as the plaintiff in any such action or suit shall direct.

57. If the garnishee disputes his liability, the Court or Judge may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined, or by order in a summary way.

58. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt or property sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or a Judge may order such third person to appear, and state the nature and particulars of his claim.

59. After hearing the allegations of any third person under such order and of any other person whom by the same or any subsequent order the

Court or a Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order attachment for contempt to issue, or execution to issue as aforesaid, or any issue or question to be tried or determined according to the preceding sections, and may bar the claim of such third person, or make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or Judge shall think just and reasonable.

60 When any lands or tenements, or the interest of any person therein, shall be attached by virtue of any process of the Court, the Sheriff, his deputy or bailiff, shall serve notice of such attachment on the tenants, occupiers, or owners of such lands or tenements; and thereafter the rents, profits, or annuities to which such person may be entitled from such lands or tenements, whether then in arrear or thereafter to grow due until final judgment, or so much thereof as shall be sufficient to satisfy the plaintiff's demand with reasonable costs, shall (after deducting thereout ground rents, if any), be paid to the Sheriff, to abide the order, judgment, or decree of the said Court, and the like proceedings may be had for ascertaining the nature and amount of such rents, profits, or annuities, and for enforcing payment of the same according to the orders of the Court, as are hereinbefore prescribed with respect to goods, debts, or effects, attached in the hands of a third person.

61. Any party who shall have obtained judgment may issue a writ of *fiери facias* thereupon, and cause warrants under such writ of *fiери facias* to be placed in the hands of any party having the custody or control of any moneys, goods, debts, or effects of the defendant or plaintiff, as the case may be; and the like proceedings shall be had to examine persons holding the said moneys, goods, debts, or effects, to determine liabilities and rights of property, to cause the said money to be paid into Court, or the said goods to be sold, and where such effects shall consist of choses in action, to cause the same to be realized, and the proceeds paid into Court, under such warrants as are had under warrants laid in virtue of mesne process

62. Property, debts and effects, attached under original or final process, shall abide the judgment, order, or decree of the said Court, in the cause in which they have been attached.

63. Payment or delivery made by, or execution levied upon, the garnishee under any such proceeding as aforesaid, shall be a valid discharge to him as against the debtor, liable under a judgment or order to the amount paid or levied, or the property delivered, although such proceeding may be set aside, or the judgment or order reversed.

64. The costs of any application for an attachment of debts or property and of any proceedings arising from or incidental to such application,

shall be in the discretion of the Court or a Judge, and may be added to and recovered with the costs in the action, or on the judgment, or on the execution against the garnishee, or otherwise, as the Court or Judge may direct.

65. The Sheriff shall, in all cases of attachment by original process, in addition to the amount sworn to, attach for costs as follows:—Where the sum sworn to does not exceed fifty dollars, the sum of fifteen dollars; where it exceeds fifty dollars and does not exceed two hundred dollars, the sum of twenty-five dollars; where it exceeds two hundred dollars and does not exceed four hundred dollars, the sum of thirty dollars; and where it exceeds four hundred dollars, the sum of fifty dollars; and in cases of attachment, under execution, in addition to the amount of the judgment, he shall attach for the costs of execution.

66. In all actions, commenced by *capias* or attachment, the plaintiff shall proceed to trial in the term first after the issuing of the writ, and if issued in term during such term, and to judgment and execution within ten days after trial unless prevented by the action of the defendant; and in default of his so doing, the Court, or a Judge thereof, as the case may require, may cause the defendant or the property attached, to be released, or the bail bond to be cancelled: provided that the Court, or a Judge may, upon sufficient cause, extend the time for any proceeding under this section.

67. The working tools and implements of trade of any person, his fishing skiff or punt, the necessary cooking apparatus, the bedding and wearing apparel of himself and his family, shall not in any case be liable to, or be taken under, attachment or execution.

IMPRISONMENT FOR DEBT

68. No person shall be arrested and held to bail in any civil action, on either original or final process, except in the cases hereinafter provided.

69. In case any party or plaintiff, being a creditor, or having a cause of action against any person not privileged from arrest, shows either before or after action brought, and before judgment, by the affidavit of himself or of some other person, to the satisfaction of a Judge of the Supreme Court, that such party or plaintiff has a cause of action against such person to the amount of fifty dollars or upwards, or that he has sustained damage to that amount, and also by affidavit, shows such facts and circumstances as satisfy the said Judge that there is good and probable cause for believing that such person has made, or is about to make, some disposition of his property or some part thereof, or is about to quit this colony with intent to defraud his creditors generally, or the said party in particular, or is about to quit this colony, and that his absence will materially prejudice the prosecution of the action, or is possessed of means of

payment, of which he has control, and which he withholds from his creditors, then such Judge may, in any such case, by a special order, direct that the person against whom the application is made shall be arrested under a writ of *capias ad respondendum* and held to bail to the Sheriff, or required to give security to the plaintiff, in such sum as the Judge thinks fit. The bail to the Sheriff shall be, that the defendant shall pay the judgment and costs, or that he shall be rendered to the Sheriff at any time after arrest, and at latest, within four days after final judgment shall have been signed. The bail taken shall be deemed sufficient, unless the plaintiff, within two days after receiving particulars of the bail, give notice that he objects to their sufficiency, and within two days thereafter obtain an appointment from a Judge or a Master, or other person appointed by the Judge to determine the sufficiency of the security. Upon the bail being held sufficient, the Sheriff shall be relieved from further responsibility, and the bond shall be assigned to the plaintiff, who may sue thereon after breach in his own name.

70. Where the defendant has not been held to bail, or given security as aforesaid, if the plaintiff in an action, by the affidavit of himself or of some other person, shows, to the satisfaction of a Judge, that he has recovered judgment against the defendant in the amount of \$50, and upwards, and also by affidavits shows such facts and circumstances as satisfy the Judge that there is good and probable cause for believing that the defendant has made or is about to make some disposition of his property, or of some part thereof, or is about to quit this colony, with intent to defraud his creditors generally, or the said party or plaintiff in particular, or is about to quit this colony, and that his absence will materially prejudice the recovery of the judgment, or is possessed of means of payment, of which he has control, and which he withholds from his creditors, then such Judge may, by special order, direct that a *capias ad satisfaciendum* be issued against such defendant.

71. The detaining creditor or detaining creditors in civil actions shall be liable to pay to the Sheriff such sum, and in such manner as by any general rule of Court, or for the purpose of the particular case, may be prescribed by the Court or a Judge, for the maintenance of a debtor while under arrest, and in default of such payment the debtor shall be discharged from custody in such action; provided that, in the event of final judgment being given in favor of the detaining creditor, then, on sufficient cause being shown to the satisfaction of the Supreme Court or a Judge thereof, the amount so paid to the Sheriff may be added to and form part of the costs in the cause, with like remedy for recovery thereof, as in other cases: provided that this section shall not apply while a debtor is under arrest or in custody under sentence or order of a Court or Judge sitting in Insolvency.

72. Any person arrested under this Act, may apply to the Court or a Judge thereof for his discharge from custody, and, upon sufficient cause

shown, the Court or Judge may order such discharge or make such other order or orders for security, time of payment, or otherwise as may seem meet, with or without costs.

73. A writ for arrest issued under this Act must be executed within one calendar month from its date, and not after, unless further order be made, when it shall continue in force for a month longer, or such less time as the order may direct.

PARTITION.

74. Where property is held in joint-tenancy, co-parcenary or in common, any party wishing a partition thereof may sue out a writ of summons, with statement of claim, against all persons who have a joint title or possession with them of such property, and refuse to make a fair partition of it, claiming a partition thereof.

75. Upon the said writ and claim being duly returned and filed, with an affidavit of the service thereof, and upon default of appearance of the parties to whom it shall be addressed, the Court or Judge shall proceed to examine into the demandant's title, and the quantity or proportion of the property to which he is entitled, and accordingly as they shall find the demandant's right and proportion to be, they will for so much give judgment by default, and give an order for partition whereby such part and proportion shall be set out severally. Such order may be directed to the Sheriff and a jury or to one or more referees to ascertain, assign and deliver the several parts or shares in such manner as the Court or Judge shall direct.

76. When this order shall have been executed, after eight days' notice given to the occupier or tenant of the premises and returned, final judgment will be entered; and the same shall be good and conclude all persons whatsoever, after notice as aforesaid, whatever right or title they have or may at any time claim to have in any of the property mentioned in the order, unless such tenant or person concerned, or either of them, against whom or their right and title such judgment by default is given, shall within three months, or in case of infancy *non sanæ memoriæ* or absence out of this island within one year after his return or the termination of such inability, apply to the Court or Judge by motion, and shew a good and probable matter in bar to such partition; in which case the Court or Judge will set aside such judgment, and the cause shall proceed as if no judgment had been given. But if the Court or Judge upon hearing thereof shall adjudge for the first demandant, then the said first judgment shall stand confirmed, and shall be good against all persons whatsoever, except such other persons as shall be absent or disabled as aforesaid, and the person so appealing shall be awarded thereupon to pay costs.

77. Should any person described in the last section, and within the time or times as there stated, come into Court, and admitting the de-

mandant's title show an inequality in the partition, the Court or Judge shall award a new partition to be made in the presence of all parties concerned (if they will appear) notwithstanding the return and filing upon the record of the former; and such second partition shall be good and firm forever against all persons not laboring under any of the incapacities herein previously mentioned.

78. In the event of the party against whom the writ shall have been issued appearing, he may either confess the action or plead that the demandants do not hold together with him. In the first case an order like that before described, with such alterations as may be necessary, will issue immediately; in the second case the truth of the tenant's plea must be tried within a convenient time, and if judgment shall be against him on that point the demandant will then be entitled to an order for partition.

79. The foregoing rules so far as they apply to the partition of property of infants or of persons of unsound mind, held in joint-tenancy, coparcenary or in common shall be subject to the following provisions, viz.: the Court or Judge may of its own motion or upon that of any party to a writ of partition or of a guardian or next friend of an infant, or of the guardian or next friend of a person of unsound mind, direct the guardian or next friend of such infant or person of unsound mind to be made a party to such writ, and in such cases the judgment to be had shall be as final and binding upon such infant or person of unsound mind, his representatives and estate, as upon other parties to the proceedings. If there be no such guardian existing, one may be appointed by the Court or Judge.

80. The order of partition, and partition and judgment thereon shall be registered in the registry of deeds.

81. If it appears to the Court or Judge that by reason of the nature of the property to which the action relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties or of any other circumstances, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court or Judge may, on request of any of the parties interested, and, notwithstanding the dissent or disability of others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

82. If the party or parties interested individually or collectively to the extent of one moiety or upwards in the property to which the action relates request the Court or Judge to direct a sale of the property and a distribution of the proceeds instead of a division between or among the parties interested, the Court or Judge shall, unless for good reasons to the contrary, direct a sale of the property accordingly, and give all necessary consequential directions.

83. If any party interested in the property to which the suit relates requests the Court or Judge to direct a sale of the property and a distribution of the proceeds, instead of a division of the property between or among the parties interested, the Court or Judge may, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property and give all necessary or proper consequential directions; and in case of such undertaking being given, the Court or Judge may order a valuation of the share of the party requesting a sale in such manner as the Court or Judge thinks fit, and may give all necessary or proper consequential directions.

84. On any sale under this Act, the Court or Judge may allow any of the parties interested to bid at the sale, on such terms as to non-payment of deposit, or as to setting off or accounting for the purchase money or any part thereof, instead of paying the same, or as to any other matters, as the Court or Judge may deem reasonable.

85. If the interest of any party in any property, the subject of partition and sale, shall consist of, or be a rent charge or annuity, orders or decrees may be made for ascertaining its value, either as a share of or charge upon the property itself, or upon any part or parts thereof, or of the proceeds thereof, and for distributing, settling and providing for the application of the same, as if the interest of such person were a share of the property itself.

86. Any person who may maintain an action for partition may proceed against any one or more of the parties interested without serving the other or others (if any) of those parties, and it shall not be competent to any defendant in the action to object for want of parties, and at the hearing of the cause the Court or Judge may direct such enquiries as to the nature of the property and the persons interested therein, and other matters, as it thinks necessary or proper, with a view to an order for partition or sale being made on further examination; but all persons interested shall be served with notice of the decree or order on the hearing, and after such notice shall be bound by the proceedings as if they had been originally parties to the proceedings, and all such persons may have liberty to attend the proceedings, and any such shall be deemed parties thereto.

87. In an action for partition the Court may make such order as it thinks just respecting costs.

88. Where any order or decree shall be made for the specific performance of a contract concerning any lands, or for the partition or exchange of any lands, or generally when any judgment, order or decree shall be made for the conveyance or assignment of any lands (either in cases arising out of the doctrine of election or otherwise), the Court or Judge may declare that any of the parties to the action wherein such

decree is made are trustees of such lands or any part thereof, or declare concerning the interests of unborn persons who might claim under any party to the said action, or under the will or voluntary settlement of any person deceased who was, during his lifetime, a party to the contract or transaction concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees thereof, and thereupon it shall be lawful for the Court or Judge to make such order or orders as to the estates, rights and interests of such persons born or unborn, as the Court might make concerning the estates, rights and interests of trustees, born or unborn.

89. The Court, or Judge thereof, may make all such decrees and orders for the appointment of trustees and for the holding, application and investment of property and moneys, and the proceeds and produce thereof, as in any case arising under the foregoing sections, may be required to give effect to the provisions thereof.

COSTS.

90. Subject to the provisions of this Act, the costs of, and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge; provided that nothing herein contained shall deprive an executor, administrator, trustee or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon: Provided that where any action, cause, matter or issue is tried with a jury, the costs of such action, cause, matter or issue shall be allowed in the same manner, and according to the same rules as before the passing of this Act.

91. If any action be commenced in the Supreme Court for any cause over which the Central District Court or the Harbour Grace District Court has jurisdiction, and a verdict shall be found or judgment given for any sum not exceeding fifty dollars, the plaintiff shall have judgment to recover such sum only, and no costs, unless the Court or a Judge thereof shall certify on the back of the record, that the action was fit to be brought in the Supreme Court.

92. When issues in fact and law are raised upon a claim or counter-claim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event.

93. If a cause be removed from an inferior Court, having jurisdiction in the cause, the costs in the Court below shall be costs in the cause unless the Supreme Court or Judge thereof shall otherwise order.

94. Where, upon the trial of any cause or matter, it appears that the same cannot conveniently proceed by reason of the solicitor for any party

having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or Judge, and which, according to the practice, ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or Judge shall think fit to award.

95. In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the Court or a Judge shall direct. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.

96. Where a bond is to be given as security for costs, it shall, unless the Court or a Judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the Court.

97. If in any case it shall appear to the Court or a Judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or Judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require), why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The Court or Judge may, if they or he think fit, refer the matter to a taxing officer for inquiry and report, and direct the solicitor in the first place to show cause before such taxing officer. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court or Judge may direct.

98. When the Court or a Judge appoints one of the solicitors of the Court to be guardian *ad litem* of an infant or person of unsound mind, the Court or Judge may direct that the costs to be incurred in the performance of the duties of such officer shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.

99. A set-off for damages or costs between parties may be allowed, notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought.

100. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

101. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase, (if any), shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary.

102. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian.

103. Upon interlocutory applications where the Court or a Judge shall think fit to award costs to any party, the Court or a Judge may, by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid.

104. As to inspection of documents under Order XXVIII, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

105. As to taking copies of documents in possession of another party, or extracts therefrom, under rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of five cents per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

106. Where any petition in a cause or matter is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be five dollars. The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this section is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled, notwithstanding such notice or tender, to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition, without appearing thereon, he is to be allowed a fee not exceeding the amount aforesaid.

107. The Court or Judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at chambers, and whether the same is objected to or not, direct the costs of any pleading, affidavit, evidence, notice, account, statement, or other document, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains

vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence. to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before and dealt with by the Court or Judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any decree or order), for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

108. In any case in which, under the last preceding section, or any rule of the Court, or by the order or direction of the Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

109. Where any party appears upon any application or proceeding in Court or at chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs for such appearance unless the Court or Judge shall expressly direct such costs to be allowed.

110. The taxing officers of the Supreme Court shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been or are by general orders directed to be performed by the Chief Clerk and Registrar, or Master, or other officers of the Court, and shall, in respect thereof, have such powers and authorities as previous to the commencement of this Act, were, or by general orders are, vested in any such officers, including examining witnesses, directing production of books, papers and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a Judge.

111. Where an account consists in part of any bill of costs, the Court or Judge may direct the taxing officer to assist in settling such costs, not

being the ordinary costs of passing the account of a receiver, and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the same fees shall be payable in respect thereof, as if the same had been referred to the taxing officer by an order; and he shall return the same, with his opinion thereon, to the Court or Judge by whose direction the same were taxed.

112. The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall, in his discretion, consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

113. When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

114. As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party.

115. As to any work or labor properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labor as have heretofore been allowed.

116. Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment.

117. Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

118. Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the Court or a Judge, upon the application of the party alleging himself to be aggrieved, prohibits the taxation of such costs.

119. Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the proper taxing officer, and give notice, with a copy of the bill, of his having so done to the other party. And at or before the expiration of two days, or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the costs or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs: but where he makes no such tender or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs.

120. Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order.

121. The allowances in respect of fees to any accountants, merchants, engineers, actuaries, and other professional or scientific persons to whom any question is referred, shall be regulated by the taxing officer, subject to appeal to the Court or Judge, whose decision shall be final.

122. As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances; and where a party is entitled to sign judgment for his costs, the taxing officer, in taxing the costs, may allow a fixed sum for the costs of the judgment

123. Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to in writing by such party at the taxation, may, within four days from the date of the certificate or allocatur, or such other time as the Court or Judge may allow, apply to a Judge at chambers for an order to review the taxation as to the same item or part of an

item, and the Judge may thereupon make such order as the Judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid, unless under special circumstances by leave of the Court or Judge the taxation is re-opened.

124. Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing office, and no further evidence shall be received upon the hearing thereof, unless the Judge shall otherwise direct

125. Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter.

126. Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his name and address for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.

127. The taxing officer shall have power to limit or extend the time for any proceeding before him, and where, by any general order, or any order of the Court or a Judge, a time is appointed for any proceeding before or by a taxing officer, unless the Court or Judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose, unless required for any special purpose.

COSTS BETWEEN SOLICITOR AND CLIENT.

128. It shall not be necessary for a solicitor to take an action by writ against his client for bills of costs in any cause or matter, but he may furnish his bill and obtain an appointment for taxation before a taxing officer of the Court, of which notice shall be given to the client at least three days before the time appointed for taxation, and the taxation shall proceed as in other cases.

129. The filing of the taxed bill, with the taxing officer's allocatur or certificate, shall have the same effect as a judgment; and execution may issue thereon in the same way.

130. A client furnished with a bill of costs may have the same taxed upon an appointment in manner and with the effect aforesaid.

131. If a greater amount than one-fifth shall be taxed off the account the solicitor shall bear the expense of taxation.

132. Costs generally shall be taxed between solicitor and client according to the table of costs under Appendix L to this Act, with the addition of reasonable fees for retainers, consultations, correspondence, and for any special labor or expense which from the peculiar circumstances of the case or through the instructions of a client, may have been incurred, although not taxable between party and party and subject to deduction for costs unnecessarily or negligently incurred.

133. If an action by writ shall have been taken for fees or costs, the same proceedings may at any time after its issue be had by either party for taxation and judgment thereon as are provided in the foregoing rules. There shall be no necessity to have furnished an account or bill of costs more than four days previously to the issue of a writ for the same, nor to give any notice of action other than the furnishing of a bill signed by or on behalf of the plaintiff, and a Judge may dispense with the necessity of delivering a bill before action in cases in which a Judge's order may issue for arrest of the person for debt.

134. Counsel may stipulate for payment of their fees, and in such cases the agreed amounts or otherwise reasonable fees due to them may be recovered by action or other proceedings as aforesaid at their suit against solicitors or parties, and in the same manner and subject to taxation as in the case of solicitors. In any case solicitors or parties shall be bound to account to counsel for counsel fees received by them on taxation or otherwise to be recovered either by action or order of a Court or Judge.

135. In cases between solicitor and client or between counsel and client in which the bill taxed shall amount to over \$25, application may be made to a Judge for revision, subject to costs of such revision as the Judge may order.

PROCEEDINGS FOR RECOVERY OF CLAIMS EX CONTRACTU AGAINST
THE GOVERNMENT.

136. Any person who may have any claim arising *ex contractu* against the Government of this colony, or against any department thereof, may proceed by a petition to the Supreme Court, setting forth as briefly as possible the circumstances of the case and praying such relief as he may

consider himself entitled to. Such petition shall be verified by affidavit, and a copy thereof shall be served upon the Attorney General, or, in his absence, upon the Solicitor General.

137. The Attorney General, or in his absence, the Solicitor General, shall, within ten days after such service, file an appearance and answer to the said petition, and serve a copy of said answer upon the petitioner or his solicitor.

138. In case of default of such appearance and answer, judgment by default shall be signed as in other cases; and upon an appearance and answer being filed and served, the case shall be proceeded with in all respects in the same manner as in other cases to final judgment.

139. Upon such judgment being certified to the Colonial Secretary by the Clerk of the Court, the same shall be carried into effect by the Government either by payment of the amount thereof out of the general revenue of the colony, or by the performance of any act that may be therein directed other than the payment of money, or judgment may be enforced by execution against the moneys, lands and effects of the Government as in ordinary cases between party and party

140. Costs shall be allowed to and be recoverable by each party in any such action in the same manner and according to the same scale as in ordinary cases.

141. The Court may, upon the application of either party, within four days after judgment, grant a re-hearing of the cause.

142. Either party in any such suit may appeal to the Queen in Council in the same manner as in ordinary cases between party and party, under the Royal Charter.

INFERIOR COURTS.

143. Where it is not otherwise provided (and subject to rules of Court) on appeals from inferior jurisdiction to the Supreme Court or any Judge thereof, and upon removals of any matter in which evidence shall have been taken, it shall be competent for the Supreme Court and the Judges thereof to direct the re-hearing of witnesses, or the re-taking of evidence, or the taking of further and other evidence by the Court below and to require the report of all evidence taken and to require the production and examination of a witness already examined, or of any persons who may not have been already examined, and to refer back the case to the Court below for further consideration in whole or in part, and in giving judgment upon any appeal, either to dismiss the same or confirm or reverse the judgment, and to alter, amend or modify the same, and to make any order as to the execution of the judgment as may be deemed just, and to make in their discretion orders as to costs.

144. It shall be lawful for the Judges of the Supreme Court from time to time, by orders to be approved of by the Governor in Council, to extend to the District Courts any of the provisions of this Act and Acts in amendment thereof, with such modifications as may be necessary or desirable.

145. Such orders shall be published in the *Royal Gazette* for at least one month before coming into operation in the said District Courts.

PLEADINGS AND PRACTICE.

146. The schedule hereto, entitled "The Rules of the Supreme Court, 1889," shall be deemed part of this Act, and be the pleading and practice of the Supreme Court thereunder.

147. In cases not provided for by this Act, or by the said rules in the schedule hereto, or by rules hereafter made under this Act, the practice and procedure of the Supreme Court of Judicature of England shall, so far as the same are applicable, be the practice of the Supreme Court.

148. Causes and matters pending at the time this Act shall come into operation shall be continued and determined as they would have been if this Act had not been passed.

RULES OF COURT.

149. The Supreme Court, or a majority of the Judges present at any meeting for that purpose held, may annul or alter and amend any of the said "rules" contained in the said schedule or any other rule or rules of the Court for the time being in force, and make any further or additional rules of Court for carrying this Act into effect, and in particular for all or any of the matters mentioned in the sub-sections to this section, namely :

- (1.) For regulating the sittings of the said Supreme Court and of the Judges of the said Supreme Court in chambers.
- (2.) For regulating the pleading, practice and procedure in the said Supreme Court and the rules of law which are to prevail in relation to remedies in causes and proceedings therein.
- (3.) For the hearing of appeals and all matters relating to or brought up by writs of certiorari from Courts of Quarter Sessions, District Courts, stipendiary Magistrates, or Justices of the Peace.
- (4.) Generally for regulating any matter relating to the practice and procedure of the said Supreme Court, or to the duties of the officers thereof, or to the costs of proceedings, and every other matter deemed expedient for the better attaining the ends of

justice, advancing the remedies of suitors, and carrying into effect the provisions of this Act, and of all Acts now or hereafter in force respecting the said Court.

150 Where any provisions in respect of the Supreme Court are contained in any statute, rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the practice and procedure of the said Supreme Court, unless, in the case of any Act hereafter passed, this power shall be expressly excluded with respect to such Act or any provision thereof.

151. Any provisions relating to the payment, transfer or deposit, into or in, or out of, any Court, of any money or property, or the dealing therewith, shall be deemed to be provisions relating to practice and procedure.

152. Subject to any order in that behalf, the business to be performed in the said Supreme Court or in the chambers of any Judge thereof, other than that performed by the Judges, shall be distributed among the several officers attached to the said Court, in such manner as may be directed by rules of Court; and such officers shall perform such duties in relation to such business as may be directed by rules of Court; and, subject to such rules of Court, all such officers respectively shall continue to perform the same duties, as nearly as may be, and in the same manner as if this Act had not been passed.

153. All rules of Court made in pursuance of this Act after it shall have come into operation, shall be laid before the Legislative Council and House of Assembly within fourteen days next after the next meeting of the Legislature; and if an address be presented to the Governor by either of the said Houses during the said sitting of the Legislature, praying that any of such rules be disallowed, the Governor may thereupon, by order in Council, disallow the same, and the said rules, except so far as disallowed, shall, immediately after the closing of the Legislature, upon being first published in the *Royal Gazette*, come into operation.

INTERPRETATION.

154. In the construction of this Act, and of the schedules thereto, and of any rules that may be made thereunder, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have or include the meaning following, that is to say:—

- (1.) "Rules" shall include Rules of Court, and both shall include forms.
- (2.) "Cause" shall include any action, suit or other original proceeding between a plaintiff and a defendant.
- (3.) "Suit" shall include action.

- (4.) "Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; but shall not include a criminal proceeding by the Crown.
- (5.) "Probate actions" include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business.
- (6.) "Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form or proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.
- (7.) "Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons otherwise than as against any defendant.
- (8.) "Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings.
- (9.) "Party" shall include every person served with notice of, or attending any proceeding, although not named on the record, and includes a body corporate or politic.
- (10.) "Matter" shall include every proceeding in the Court not in a cause.
- (11.) "Pleading" shall include every petition or summons, and shall also include the statement in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.
- (12.) "Judgment" shall include decree.
- (13.) "Order" shall include rule.
- (14.) "Oath" shall include solemn affirmation and statutory declaration.
- (15.) "Proper officer" means an officer to be ascertained as follows:—
 - (a.) Where any duty to be discharged under this Act, or Rules of Court, is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same;
 - (b.) Where any new duty is under this Act or Rules of Court to be discharged, the proper officer to discharge the same shall be such officer as may from time to time be directed by the Court or a Judge to discharge the same.

For taking acknowledgment of every deed, conveyance or other assurance	1 00
For every affidavit prepared by a Commissioner in proof of a will, codicil, or letters testamentary	1 00
For attesting every statutory declaration or affirmation	1 00

SCHEDULE C.

FORM OF BOND TO THE SHERIFF IN CASES OF ATTACHMENT.

Know all men by these presents that we, A. B., of , C. D., of , and E. F., of , are severally held and firmly bound unto the Sheriff of the district of Newfoundland, in the penal sum of (double the amount sworn to) each, to be paid to the said Sheriff, his successors and assigns; and for which payment well and truly to be made we severally bind ourselves, our executors and administrators, by these presents. Sealed with our seals, and dated at , this day of , A. D. .

Whereas the said A. B. has been attached at the suit of G. H. for the sum of (the amount sworn to), and is desirous of giving security pursuant to the statute for release from such attachment:—

Now, the condition of this obligation is such, that if the said A. B., his executors or administrators, do and shall well and truly pay, or cause to be paid to the said G. H., his executors or administrators, or assigns, upon demand, the said sum of . or the amount of any judgment, if it be less than the said sum, that may be recovered by the said G. H. against the said A. B. in the said suit, and in default thereof restore to the said Sheriff the property mentioned and valued in the schedule annexed and attached in this suit, in the like order and condition in which the same now is, or pay to the said Sheriff the value of the property attached, then this obligation to be void, otherwise to be and remain in full force and virtue.

SCHEDULE D.

FORM OF BOND TO THE SHERIFF IN CASES OF ARREST BEFORE JUDGMENT.

Know all men by these presents that we, A. B., of , C. D., of , and E. F., of , are severally held and firmly bound unto the Sheriff of the district of Newfoundland, in the penal sum of (double the amount of Judge's order) each, to be paid to the

Sheriff, his successors and assigns, and for which payment well and truly to be made we severally bind ourselves, our executors and administrators, by these presents. Sealed with our seals and dated at _____, this day of _____, A. D. _____.

Whereas the said A. B. has been arrested by Judge's order, at the suit of G. H. for the sum of _____, and is desirous of giving security, pursuant to the statute for the release of such arrest: Now the condition of this obligation is such, that if the said A. B. be rendered to the custody of the said Sheriff, to abide the judgment of the Court in this cause, within, at latest, four days after judgment shall be signed against him in this said action, or the amounts of the said judgment and costs shall be paid to the plaintiff, or to the said Sheriff, on his behalf, then this obligation to be void, but otherwise shall remain in full force.
