

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Monday, the Second Day of October, 1758, and in the 32nd year of His Majesty's Reign.

32 George II – Chapter 27

An Act for confirming the part Proceedings of the Courts of Judicature, and for regulating the further Proceedings of the same.

Be it enacted by the Governor, Council and Assembly, and by the Authority of the same it is hereby enacted, that His Majesty's Supream Court [Supreme Court], Court of Assize, and General Goal Delivery, shall be held and kept at the usual times and places, that is to say, on the last Tuesday in the Month of October, and on the last Tuesday in the month of April, in every year, in the Town of Halifax; and that the Court of General Sessions of the Peace shall be held quarterly as usual in every year, in the said town, that is to say, on every first Tuesday in the months of December, March, June and September; and that the inferior Court of Common Pleas, shall be held as usual oh such first Tuesday in the said Months of December, March, June and September.

And be it further enacted, that all rules and orders, proceedings, pleadings, sentences, verdicts and judgments, in the said Courts respectively, and all executions awarded thereon, shall be, and are hereby ratified and confirmed.

And be it further enacted by the authority aforesaid, that all processes and Writs for the bringing any suit into the said Inferior Court of Common Pleas, shall issue out of the Clerk's Office of the same Court, in His Majesty's name, under Seal of the said Court, to be signed by the said Clerk, and to be directed to the Provost-Marshal of this Province or his Deputy; and if such Process or Writ be against the Provost-Marshal or his Deputy, then to be directed to the coroner of the County, who is hereby impowered to execute the same. And all Writs, as well original as judicial, issuing out of the Clerk's Office as aforesaid, shall run through the laid Province, and be executed by the Officer or Officers to whom they shall be directed. And that all Processes and Writs, as well original as judicial, issuing out of the Clerk's Office of the said Court, shall bear teste of the first Justice named in the Commission for holding the said Court, and upon any vacancy, by his death, removal, or other impediment, then of the Justice next named in the laid Commission for the time being. And all proper original Process in the said Court, shall be summons or attachment, which shall be made returnable twelve days before the sitting of the said Court of Common-Pleas, according to the Order herein before prescribed, and shall always bear true teste of the time of issuing thereof, and shall be served and executed by the proper Officer, as before in this Act is prescribed, fourteen days before the next Court after the date of such Writ or Process, (except all Writs served at Annapolis-Royal, Chigneccto, Lunenburg, or any other distant part of this Province, which may be returned at any time during the sitting of the said Inferior Court.) And that the proper Original Summons or Attachment, and the Writ of Execution, in all Civil Actions, and the Writ of Habere facias Possessionem, in all real actions between party and party, shall be in the from as heretofore have been used and observed.

And in order to prevent needless and vexatious arrests and imprisonments of His Majesty's subjects, freeholders and inhabitants of this Province, for any sum under ten pounds.

Be it enacted by the authority aforesaid, that no person or persons whatsoever who now is, are, or hereafter may be a freeholder and inhabitant, or freeholders and inhabitants in this Province, and whose freehold is free from incumbrances, shall be arrested, imprisoned, or held to bail, or his or their goods, chattels, or estate attached, unless the plaintiff in such action shall make and subscribe an Affidavit in Writing, before a Judge of the Court or the Clerk of the Court, from whence such Writ shall issue, (who is hereby empowered to administer the same) that the defendant is justly indebted to the plaintiff in the sum of ten pounds or upwards, according to the present rate of currency in Halifax; which Affidavit shall be filed in the Office of the said Clerk, in the form following, viz.

"In the Court of Common-Pleas, in the _____ year of His Majesty's Reign.

A. B. _____ Plaintiff against C. D.

Defendant,

A. B. the plaintiff in the above cause maketh oath, That C. D. the defendant in the said cause, is justly indebted to him in this deponent in the sum of

(mentioning in words at length how the debt or demand arises) and that he this deponent hath not received any part thereof.

A.B.

Sworn at Halifax, in the
Province of Nova-Scotia,
This _____ day of _____ 17____
before me,

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"
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And if such action shall be brought by any agent, factor, or attorney, in the name of his principal, if absent, upon producing an affidavit of such debt, of his principal, duly authenticated according to the laws of England, or the usage and practice of the plantations in such cases, or if such principal be in any part of the Province, remote from the Courts, upon producing an affidavit taken as aforesaid, before a Justice of the Peace, and upon the said affidavits being respectively filed as aforesaid, then the said Judge, or Clerk of the said Court, shall direct bail to be taken in the following words, viz.

Take bail for _____ (expressing the sum in words at length) upon affidavit of the plaintiff filed according to the law of this Province. For which sum, and no more, bail shall be taken, or the defendant's goods, chattels, or estates shall be attached. Provided, that nothing in this Act contained, shall extend, or be construed to extend, to give any power or authority to the Clerk of the said Inferior Court to administer any affidavit or oath to any plaintiff or plaintiffs, where the cause of action founds in damages only, but in

such cases such Oath or Affidavit shall be taken before two Judges of the Court, who shall mark the Writ for Bail accordingly.

Provided nevertheless, that all goods, chattels or estates taken by attachment, shall remain under such attachments, for the space of thirty days after final judgment, and no longer.

Provided, that no action under the value of three pounds, shall be brought into the said Court of Common-Pleas, unless where freehold is concerned, or upon appeal from the judgment of the two Justices of the Peace, as heretofore used.

And be it further enacted by the authority aforesaid, that the Provost-Marshal of this Province for the time being, his deputy, or other person by this Act qualified to execute Process or Writs, shall duly make return thereof, with all his doings thereon, twelve days before the sitting of the Court to which such Process or Writ is returnable: And the plaintiff's attorney shall in all cases, within three days after such return, file with the Clerk of the said Court, a declaration clearly setting forth the cause of action against the defendant or defendants, and shall, at the same time, annex to or file with such declaration, a copy of the bond and condition thereof, bill, note, contract, agreement, lease, account, or other writing, on which such Action is grounded; and in case of failure thereof, the plaintiff shall be nonfuit, and pay costs, to be taxed at the next Court, and the defendant or defendants in any suit, shall enter his appearance by his attorney in four days (the intervening Sunday to be excepted) after the return of each Writ, with the Clerk of the said Court, in a book to be kept by him for that purpose, and take copies, at his or their own costs, of the declaration, or account, or other papers thereto annexed, in order to make defence; and for want of such appearance entered within the time aforesaid, the Clerk of the said Court is hereby empowered to enter the default, by indorsing the fame with his own hand and name thereto subscribed, on the Declaration, and the defendant or his attorney, shall, before twelve of the clock at noon of the Thursday following, after appearance entered as aforesaid, file with the Clerk of the said Court, the defendant's plea, either in abatement to the Writ, or in bar of the action, or demurrer to the Writ and Action, or the general issue, as he may be advised, and for want thereof, the Clerk of the said Court is hereby empowered to enter the default against any defendant or defendants, by endorsing the same on the declaration, expressing the time when, and whether for want of appearance or plea. And if the defendant shall have entered his appearance, and pleaded in any of the ways, and within the times before-mentioned, the plaintiff's attorney shall, on the Saturday next after the filing the defendant's plea or demurrer as aforesaid, file with the Clerk of the said Court the plaintiff's replication in writing to such plea or joinder in demurrer, if any demurrer there be, at which time each respective cause shall be understood and deemed to be at issue, and no further or other pleadings, under pretence of bringing the fame to issue, shall be allowed of.

Provided, that where any judgment shall be entered by default, for any of the causes aforesaid, the defendant or his attorney may, upon affidavit being filed the first day of the Court, setting forth the occasion or means which prevented an appearance being entered, or plea filed in due manner as before is prescribed, and disclosing the whole matter to the

Court, and that he rests the merits of the cause upon trial only, and motion thereupon made, the said Court is hereby empowered, from the merits and circumstances of the case, upon the defendant or his attorney agreeing to pay the plaintiff his costs to be then taxed, order such default to be struck off, after which, or after an imparlance in any case, no special pleading shall be allowed of, but the cause shall, without further delay, proceed to issue for trial, either at such court or at any other court as shall be ordered.

Provided also, that no matter of fact shall be allowed to be pleaded in abatement, without an affidavit of the truth of the plea being thereunder made, and that no dilatory Plea be allowed to be filed, unless it be signed by some attorney of the said Inferior Court.

And Whereas several doubts and difficulties have heretofore arisen, to the great impediment of the proceedings of the Inferior Court of Common Pleas, touching the constructions of bail in civil actions; for preventing whereof or the future,

Be it enacted by the authority aforesaid, that when any person or persons shall be arrested, by virtue of any writ issuing out of the said Inferior Court, the Provost-Marshal or his Deputy, or other Person by this Act qualified to serve Writs, shall be obliged, and are hereby respectively required, upon sufficient bail being offered, to let such defendant or defendants go at large, upon his or her, or their first executing a bond with two sufficient surties, to the said Provost-Marshal, with condition thereunder written for the personal appearance only of the defendant on the first day of the Court to which such Writ is returnable, and according to the tenor thereof; and if such defendant shall not appear accordingly, or if sufficient bail to abide the final event of the suit shall not then be offered in behalf of the defendant, judgment shall thereupon be entered against the defendant by default, and the Provost-Marshal shall immediately, upon request of the plaintiff or his attorney, in Court assign the bail bond, by indorsing his name thereon, for the benefit of the plaintiff, to be put in suit, or otherwise recover the penalty thereof; which assignment shall not debar the plaintiff from proceeding to final judgment and execution the same Court, against the defendant or defendants in the said action. And whenever it shall happen that the defendant or defendants shall appear according to the tenor of the condition of such bail bond, and offer bail to the satisfaction of the plaintiff and approbation of the Court, or if the defendant from some impediment, shall not happen to appear, but nevertheless two sufficient persons, to be approved of by the plaintiff and the Court, shall offer to become bail; in either of the said cases, a recognizance with condition thereunder written, in the following form, Mutatis Mutandis, shall be entered into by the defendant (if present) and his bail.

Province of }
Nova-Scotia, }

“Inferior Court of Common Pleas

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A. B. Plaintiff, against C. D.
Defendant.

Bail E. F. of _____ in the Province aforesaid, (Addition) and G. H. of.
(Addition) the Party Defendant (if present) in
pounds, each of the bail in _____ pounds apiece.

The condition of which recognizance is, that the defendant (if present) do acknowledge to owe unto the Plaintiff _____ Pounds, and each of the bail do severally acknowledge to owe unto the plaintiff _____ pounds apiece, to be levied upon their several goods and chattels, lands and tenements, upon condition that if the defendant be condemned in the said action, either in this Court, or in His Majesty's Supreme Court of Judicature of this Province, upon appeal thereof, he shall pay the condemnation money, or render himself a prisoner in the goal of Halifax for the same, and if he fails, the said E. F. and G. H. undertake to do it, for him."

Upon acknowledging which recognizance, the defendant shall be admitted to plead to the action by his attorney, and issue, either in law or in fact, shall be joined in one day after acknowledging the recognizance; and if upon the trial of any such issue, in any case whatsoever, either of the parties shall think himself aggrieved at the sentence of the Court, they may, by virtue of this Act, appeal to the next Supreme Court of Judicature, and the said Inferior Court is hereby empowered to allow of the same, agreeable to the ways heretofore used, in case of appeal. But if, upon trial of any issue at law upon appeal, the Supreme Court, notwithstanding the plea in bar or abatement, shall adjudge the Writ to be good and well brought, the said Supreme Court shall reverse the judgment of the Inferior Court, and award to the appellant the sum of five pounds costs, for his delay of justice, over and above all other usual and needful costs to be taxed by the said Court, to be immediately paid by the original defendant or appellee, or his attorney who signed the plea; and the next Inferior Court of Common Pleas, shall proceed to the trial of the merits of the cause, upon the same Writ, without any further delay, a new entry thereof being made.

And be it further enacted by the authority aforesaid, that whenever any person shall be committed to prison, by virtue of any original Writ, issuing out of the said Inferior Court as aforesaid, the Provost-Marshal or his deputy, or other person by this Act qualified to execute Writs; shall, at the same time, serve such prisoner or prisoners, with a true copy of inch Writ or Writs, together with the indorsement thereon. And the plaintiff's attorney on the day after the filing the declaration, with the account or instrument in writing on which the action is grounded, as in this Act prescribed, shall give notice in writing to such defendant or defendants, that a declaration is filed against them in the Clerk's Office, setting forth the substance thereof, and that unless he employs an attorney of that Courts to plead thereto before the first day of the then next ensuing Court, judgment will be entered against him by default; the service of which notice shall be deemed sufficient, by leaving the fame with the keeper of the prison, his deputy, wife, or servant, where such defendant is imprisoned; and upon failure of delivering such notice by the keeper to such prisoner, the said keeper shall

forfeit and pay all such damages as the defendant may have sustained by such neglect. And upon the first day of the Court the plaintiff's attorney, (if no Appearance be in the mean time entered) upon producing a copy of such notice, and Affidavit of the due service thereof as aforesaid, judgment shall be entered by default, against such defendant or defendants in prison. And in all causes whatsoever, (except actions of debt, or actions grounded on specialties) now depending, or hereafter to be brought in the said Inferior Court, wherein the defendant or defendants have or shall suffer judgment therein to pass against him, her, or them, by default, the said Inferior Court is hereby impowered and required, in lieu of a Writ of Enquiry of Damages, to order a Jury to be (worn to assess the damages at the bar, for which the jury shall be paid such fees as heretofore have been usual on trials of issues.

And be it further enacted by the authority aforesaid, that all Writs of Summons hereafter to be issued, shall be indorsed by the Attorney who sues out the same; and the defendant or defendants therein named, shall respectively be served with a true copy thereof, before the return of such Writ.

And be it enacted by the authority aforesaid, that all debts under the value of three pounds, shall be sued for and recovered before any two of His Majesty's Justices of the Peace: And all debts under the value of twenty shillings, shall be filed for and recovered before one Justice, as heretofore hath been practiced and used, subject nevertheless to an appeal, as heretofore hath been used. And all proceedings and judgments heretofore had and made, before any two justices, or one justice, are hereby ratified and confirmed.

This Act to continue and be in force for the space of two years.