

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 36

An Act in Addition to, and Explanation of an Act passed this Sessions, intituled, “An Act for Confirming the past Proceedings of the Courts of Judicature, and for Regulating the further Proceedings of the same.”

Whereas by an Act made and passed this present session of general assembly, intituled, “An Act for the Confirming the part Proceedings of the Courts of Judicature, and for the regulating the further Proceedings of the same,” it is among other things enacted, “That in all causes whatsoever (except actions of debt, or actions grounded on specialties) now depending or hereafter to be brought in the Inferior Court, wherein the defendant or defendants have or shall suffer judgment to pass against him, her, or them by default, the said Inferior Court is hereby empowered, and required, in lieu of a Writ of Enquiry, to order a jury to be sworn to assess the damages.”

And whereas some doubts have arisen what agreements in writing, the word specialty may extend to, be it enacted by His Excellency the Governor, Council and Assembly, and by the authority of the same it is hereby enacted, that hereafter, all bills of exchange, notes of hand, mutual settlement and adjustment of accounts, or any agreement in writing wherein a certain sum is specified and expressed, signed by the defendant, shall have the force and effect of a specialty; and the court (wherein the defendant shall be defaulted) is hereby empowered, upon the plaintiff or his attorney's filing such bill, note, settlement of account, or agreement, with the clerk of the court, to make up judgment without a jury, as hath been heretofore practised.

And whereas by the said Act it is further enacted, “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 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.”

And whereas altho' the body of the debtor may not be arrested, imprisoned, or held to bail, for any sum less than ten pounds, as by the said clause is provided, yet it has been found prejudicial to the creditors, their, being restrained from attaching the goods, chattels, or estate of the debtor or debtors, for any sum or demand under ten pounds, whereby great frauds may be committed, by the debtor conveying away or concealing his or her estate and effects, before judgment can be rendered, and by means thereof the creditor may be

defeated of recovering any manner of satisfaction for his or her debt or demand, in order, therefore, to prevent the same,

Be it enacted by the authority aforesaid, that in all actions hereafter to be brought, when the debt or matter in demand shall be of the value of three pounds or upwards, upon affidavit in writing being made and subscribed by the plaintiff, or in case of his or her absence, then of his or her attorney in fact, agent or factor, setting forth that the defendant in such action is justly indebted to the plaintiff, in the sum of three pounds or upwards, and the same being filed and the writ marked as by the said Act is prescribed, it shall and may be lawful for the Provost Marshal of this Province, his deputy, or other person qualified to serve Writs, and they are hereby required, to attach the goods, chattels, or estate of the defendant or defendants, any thing in the said Act contained to the contrary notwithstanding.

And be it further enacted, that in all actions hereafter to be brought in the name of any person absent from this Province, it shall and, may be lawful for the agent, factor, or attorney in fact, of such absentee, to make and subscribe an affidavit in writing, before a judge of the court or clerk of the court, from whence the writ shall issue, (who is hereby empowered to administer the same) setting forth 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 this Province, and how the debt or demand arises; which affidavit being filed in the office of the clerk of the said court, shall be as effectual to all intents and purposes, as if made by the principal or plaintiff in such suit: And the judge or clerk of the said court who shall take the same, shall give bail to be taken, by indorsing the writ in the same manner, *mutatis mutandis*, as in and by the said Act is prescribed: And by virtue of such writ, the defendants body may be arrested or imprisoned, or his goods, chattels, or estates attached, any thing in the said Act to the contrary notwithstanding.

And whereas trial of causes in a summary way, before one or two Justices, hath been found very useful, and a means of determining many suits with little costs,

Be it enacted by the authority aforesaid, that the Inferior Court of common Pleas, be and are hereby empowered (in all causes or actions brought before them, the sum total whereof shall not exceed the sum of five pounds) to proceed in a summary way, by witnesses, to examine into the merits of such causes, wherein no dilatory pleas shall be allowed, and to determine therein according to law or equity, and to make up judgment accordingly, subject to an appeal to the Supreme Court when the judgment shall be five pounds, there to be determined in manner aforesaid. Provided always that when on the examination of the witnesses, the matters of fact, from the evidence, may be doubtful to the court, in such case they may order a jury to be summoned to try the same.

And whereas references and awards have contributed much to the speedy settlement of accounts between merchants, tradesmen, and others, and to their satisfaction,
Be it enacted by the authority aforesaid, that, on application made in court by the parties, or their attorneys, agents, or factors, in any action commenced there, that they mutually agree

to leave the matters in difference, to the arbitration of indifferent men, to be chosen by each party, in such case the court shall appoint a person to be joined to the said arbitrators; and the judgment or award of the majority, shall have the full force and effect of a verdict; and the court is hereby empowered to make up judgment thereon, and award execution accordingly.

And be it further enacted, that when any merchants, traders, or others, desire to end any controversy, suit, or quarrel, by arbitration or award, it shall and may be lawful for any of His Majesty's Courts of Record, to receive and order such their submission or agreement in writing, being first proved on oath, to be entered with the conditions thereof; and on the return of the award and determination of the arbitrators (or umpire, when so submitted) and the same being filed with the clerk of the court, on the first day of the court, the said court is hereby empowered to enter the same, and make up judgment, and award execution thereon.

And be it further enacted, that in the vacancy of every court, the parties agreeing to a submission may file and enter their submission and agreement with the clerk of the said court, and upon producing such agreement of submission in writing, and an affidavit thereunto annexed, of the perfection thereof, with a certificate of the filing the said submission, to any of the judges of the courts, such judge is hereby empowered to order and direct that such submission shall be received and made a rule of court, and that the parties shall finally be concluded by the arbitration and umpirage; and it shall become a record thereof, in the same manner, as tho' that action had been commenced by writ and declaration.

Provided nevertheless that if complaint be made to the court, before the entering of judgment, that the referees, arbitrators, or umpire, misbehaved themselves, and that such award was unduly or corruptly procured; on proof thereof, such award shall be void, and shall be set aside by the said court.

And be it further enacted, that no action, wherein the title of lands, tenements, or hereditaments, may be called in question, shall be determined in any of the manners beforementioned, but that all real actions shall be determined by verdict of a jury, as heretofore practised.

And be it further enacted, that when witnesses may be judged necessary by the parties, to clear up any of the matters of variance, submitted to a reference or arbitration, the Justices of the Peace are hereby empowered to swear such witnesses, to give their evidence before such referees or arbitrators, and they are hereby empowered to examine the same; and if any witness, being first summoned by the said Justice, shall refuse to be sworn or attend, (not having any just or reasonable cause therefor, to be allowed of by the arbitrators or the majority of them) at the time and place appointed by the referees or arbitrators, and there give their evidence, such witness so failing herein, shall be liable to pay a fine not exceeding

ten pounds, to be levied by such Justice, by warrant of distress and sale of the offenders goods.

And be it further enacted, that where any person or persons shall be summoned to give evidence upon the trial of any issue between party and party, or in behalf of any prisoner upon trial, and such person or persons, so summoned, shall refuse or neglect to give his, her or their attendance at the time and place mentioned in the summons or subpoena, (not having any just or reasonable cause therefor, to be allowed of by the court) or willfully withdraw himself or herself, before sworn, or shall willfully refute to be sworn, or shall refute to give his or her evidence; in every such case, the party so offending, shall forfeit and pay to the party grieved, the sum of two pounds, to be levied by warrant of distress and sale, from the court, on the offenders goods and chattels. Provided nevertheless that no person shall be obliged to give evidence in any cause before such person be paid or secured their reasonable charges for attendance, to be allowed of and ordered by the court.

And be it further enacted, that in all actions of account brought against any bailiff or factor, or other person to whom money or goods have been delivered, with an intent that the same shall be accounted for, before the inferior court of common pleas, or the Supreme Court [Supreme Court], on an appeal, when the defendant shall plead in his defence any plea that he ought not to account, it shall be tried by a jury; and in case the verdict be found against him, the court shall enter judgement against him, that he shall account. And the court are hereby empowered and directed to appoint three able, judicious, and indifferent men, who shall be sworn faithfully to hear, examine, and adjust the account or accounts, and examine any witnesses necessary to explain the same; and also to examine the parties on oath, to be sworn before any justice of the peace in manner aforesaid, and under the like penalty on their refusal: And when the auditors shall have adjusted and settled the accounts, on the return thereof under their hands, or the major part of them, with the ballance thereof rated, the said court is hereby empowered to enter judgment agreeable thereto, and award execution accordingly. Provided always that the referees, arbitrators, or auditors, before they proceed to examine into the merits of any cause, submitted to them by the court on agreement of the parties, or by bonds of submission, shall give notice under their hands, to all parties concerned, of the time and place of their meeting, at least three days before their sitting; and if any of the parties shall refuse or neglect to attend them, they shall, nevertheless, proceed to make up their award and determination. Provided that if the plaintiff or defendant in such action, his, or their attorney, agent or factor, shall take exceptions to such report, or any part thereof, and desire the same to be tried by a jury, which they are hereby empowered to do, the said court is hereby required to order a jury to be sworn to try the same; and if, upon trial of the issue, and judgment, either of the said parties or their attorneys or agent, shall not rest satisfied therewith, the said court is hereby required to allow of an appeal, upon being moved for.

And be it further enacted, that in all actions sued on book accounts, defendant in such cause may file his account against the plaintiff, with the clerk of the court, provided the same be done at the time the defendant files his plea with the clerk of the said court; and the said

court is hereby empowered, to proceed, on issue joined, to inquire into the merits of both accounts, before one and the same jury, and, on the verdict of the jury, to award costs as they shall find, whether for the plaintiff or defendant; and where the action shall be commenced on any bond, bill, note, or agreement in writing, the defendant may, in like manner, file his receipts or discharge for part or the whole, according as he hath made payment; Provided such receipt or discharge be in writing, signed by the plaintiff or his attorney lawfully empowered to receive the same; and the court is hereby empowered to proceed to examine into the merits of the same, in the same manner as in book accounts, between the plaintiffs and defendants, and equitably to reduce all such bonds, notes, bills, and writings obligatory, to the just debt, with interest, damages and cost, according to the nature of such writing, deed, or instrument, and the jury are hereby empowered to give their verdict accordingly.