

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Wednesday the first day of July, 1761, and in the first year of His Majesty's Reign, and there continued by several prorogations until Monday the Twenty-Fifth Day of April, 1763, in the Third Year of His Majesty's Reign.

3 George III – Chapter 2 (Session 1)

An Act for regulating the Proceedings of the Courts of Judicature.

Be it enacted by the Lieutenant-Governor, Council, and Assembly, that hereafter all bills of exchange, notes of hand, mutual settlements and adjustments of accounts, or any agreement in writing, wherein a certain sum is specified 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 practiced.

And be it further enacted, that in all actions hereafter to be brought when the debtor matter of demand, shall be the value of three pounds or upwards, upon affidavit in writing being made and subscribed by the plaintiff, before one of the Justices of the Court or before the clerk of the said court, from whence the writt issues, or in case of his or her absence, then by his or her attorney, 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 writt marked, it shall and may be lawful for the Provost-Marshal, his deputy, or other person qualified to serve writts, and they are hereby required to attach the goods, chattels or estate of the defendant or defendants; and all goods, chattels or estates taken by attachment, shall remain under such attachment for the space of thirty days after judgment, to satisfy any judgement that may be obtained on such writt or process.

Provided nevertheless, that where the cause of action sounds in damages only, in such case, the oath or affidavit shall be taken before two judges of the court, who shall mark the writt for bail accordingly.

And whereas references and awards have contributed much to the speedy settlement of accounts between merchants, traders, and others, to their satisfaction.

Be it enacted, that on application made in court by the parties, or their attornies, 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 judgement or award of the majority shall have the full force and effect of a verdict, and in their said judgment or award may order the costs and charges of the suit of the parties, as they shall judge equitable, 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, at any time within the term of such court, to receive and order such their submission or agreement in writing, being first proved on oath, to be entered with the conditions thereof, together with 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, the said court is hereby empowered to enter the same and make up judgment and award execution thereon.

Provided always, 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 unduely or corruptly procured, on proof thereof such award shall be void, and shall be set aside by the court.

And be it further enacted, that no action, wherein the title of lands, tenements, or hereditaments may be called in question, shall be deter-mined in any of the manners before mentioned but that all real actions shall be determined by verdict of a Jury as heretofore practiced.

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 just of 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 one hundred pounds, to be levied by such Justice by Warrant of Distress and sale of the offenders goods.

And be it further enacted, that when 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 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 subpoena or summons, (not having any just or reasonable cause therefor, to be allowed of by the court or Justice or Justices, before whom the trial shall be) or wilfully withdraw himself or herself before sworn, or shall refuse to give his or her evidence, in every such case the party so offending shall forfeit and pay, if before the court the sum of one hundred pounds, if before one or two Justices five pounds; to be levied by Warrant of Distress and sale from the court, or Justice or Justices, on the offenders goods and chattels. Provided nevertheless, that no person shall be obliged to give evidence in any cause before he or she be paid or secured his or her reasonable charges for attendance, to be allowed of and ordered by the court, Justice or Justices.

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 Supream 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 Judgment against him, that he shall account: And the court are hereby impowered 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 dated, the said court is hereby impowered to enter Judgment agreable thereto, and award execution accordingly. Provided always, that the referrees, arbitrators, or auditors, before they proceed to examine into the merits of any cause submitted to thereby the court on agreement of the parties, or by bonds of submission, or auditing of accounts, 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 parties shall refuse or neglect to attend them, they shall, nevertheless, proceed to make up their award and determination, and settlement of such accounts. 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 impowered 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 attornies 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, the defendant in such cause may file his account against the plaintiff, with the clerk of the court, provided, the same be done at least seven days before the sitting of the court; and the said court is hereby impowered to proceed, on issue joined, to enquire 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 receipts or discharge be in writing, signed by the plaintiff or his attorney lawfully impowered to receive the same, and the court is hereby impowered 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 obligators, to the just debt, with interest, damages and cost, according to the nature of such writing, deed, or instrument, and the jury are hereby impowered to give their verdict accordingly.

And be it further enacted, that all causes where the sum shall not exceed twenty shillings, shall be sued for and recovered before one Justice of the Peace; and that all causes where the sum shall not exceed three pounds, shall be sued for and recovered before two Justices;

subject to an appeal as heretofore hath been practised; and they are hereby impowered to award execution returnable to him or them within ten days after the date thereof; and if not satisfied he or they may issue out an alias or pluries, returnable respectively within the term of ten days each; and all writts issuing from such Justice or Justices, shall be made returnable at least seven days after their dates respectively.