

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 the 19th day of October, 1763, in the Third Year of His Majesty's Reign.

3 George III – Chapter 6 (Session 2)

An Act in Addition to an Act, intituled, An Act for Regulating the Proceedings of the Courts of Judicature.

Be it enacted by the Lieutenant Governor, Council, and Assembly, that all processes and writs for the bringing any suit into any of the inferior courts of common pleas within this Province, shall issue out of the clerks office of the same court where the cause is to be tried, in His Majesty's name under the seal of the said court, and shall be signed by the said clerk, and be directed to the Provost Marshall of this Province or his deputy and if such process or writ be against the Provost Marshall, then it shall be directed to the coroner of the county, who is hereby empowered 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 said Province, and be executed by the officer or officers to whom they shall be directed; Provided always, that were the plaintiff and defendant shall both reside in the same county, that then the action shall commence, and be [held] in the Inferior Court of that county.

And be it further enacted, that all processes and writs, as well original as judicial, issuing out of the clerk's office of the respective courts, shall bear teste of the first Justice names in the commission for holding the said court; and upon any vacancy by his death, removal or other impediment, then the Justice next named in the commission for the time being; and all proper original process in said court shall be by summons or attachment, which shall be made returnable twelve days before the sitting of the said court, and shall always bear true teste of time of issuing thereof, and shall be served and executed by the proper officer, as before in this Act is [prescribed], at least fourteen days before the sitting of the courts respectively,) and that the proper original summons or attachment, and the writ or execution, in all civil actions, and the writ of habere facias [possessionem] in all real actions, between party and party, shall be in the form as hath been used and observed.

And be it further enacted, that the plaintiff shall within three days after the return of the writ, file with the clerk of the 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 pay ten shillings costs, and he shall have liberty, to file his declaration and copy of accounts and writings as aforesaid, on which his action is grounded, before the day of the sitting of said court; and it shall be in the power of the court to give such further time to the defendant to plead as they in their discretion shall judge necessary: And the defendants pleas if any, he or they have, either in abatement to the writ, or in bar to the

action, or demurrer to the writ and action, shall be filed with the clerk of said court, at least four days before the sitting of the said court; and if he or they neglect to file the same, they shall not be allowed afterwards the benefit of such pleas, but at the sitting of said court shall plead over the general issue only; And if such pleas shall be made within the time aforesaid, the plaintiffs replication thereto, shall also be filed with the clerk of said court, before the day appointed for the sitting of said court. Provided always that no dilatory plea be allowed to be filed, unless signed by the parties to the suit respectively, or by some attorney of the court.

And be it further enacted, that when it shall so happen, that any of the witnesses which shall be judged necessary to be produced on the trial of any cause between party and party, (except for trespass or suits for uncertain [d-----] shall be inhabitants in another county, or live at a greater distance than thirty miles from the court, in which such cause shall be tried, any one of the Judges of the Court of Common Pleas for the county in which such witness shall dwell, may take his deposition in writing; due notice being first given to the adverse party if within the county, or within fifteen miles of the judge taking such deposition, and such deposition so taken, and certified under the hand and seal of the said judge, and [sealed] up and directed to such court, shall be received as legal evidence in such cause; and whereas it may happen that the parties to a cause having [mutual] accounts, may be at such distance from the court where the same is to be tried, as may render it very inconvenient to produce his originals, account books, and convey them to such distance; Be it also enacted, that such accounts may also be proved on oath, before any action is to be tried, or before any one of the judges of such court in the county where the party may refuse; the account being first compared by the original books and so certified.

And be it enacted, that no person who now is, or hereafter shall be a freeholder and inhabitants in this province, and whose freehold is free from incumbrances, shall be arrested, imprisoned, or held to bail, 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 that the defendant is justly indebted to the plaintiff in the sum of ten pounds or upwards affidavit shall be filed in the office of the said clerk: and the sum specified in such affidavit, shall be indorsed on the back on the said writ in the following form.

By oath for £.

For which sum so indorsed the Provost Marshall, or his deputy, shall take bail, and no more. Provided always, that nothing in this Act contained, shall prevent any creditor from arresting, or holding to bail, or attaching the goods and chattels, of any transient person, but such person is, and shall be liable to an attachment of the bod, or goods and chattels, for any sum whatsoever, on affidavit being first made and filed as aforesaid.

And be it further enacted, that if such action, shall be brought by any agent factor or attorney, in the name of his principal, if absent, upon producing an assistant of such the 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 indorse the sum so sworn to, and bail shall be required accordingly.

And be it further enacted, that when any person or persons shall be arrested by virtue of any writ issuing out of the said Inferior Courts, the Provost Marshal or his deputy, 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 sureties, to the said Provost Marshal, with a 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 if such defendant shall not appear accordingly, or if sufficient bail to abide to the final event of the suit shall not be offered in behalf of the defendant; Judgement shall thereupon be entered against the defendant by default, and the Provost-Marshal, shall then and there in court upon the request of the plaintiff or his attorney, 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 judgement, and execution the same court against the defendant or defendants in the said action, as in cases wherein default is made. But whenever it shall happen that the defendant or defendants shall appear according to the tenor of the condition of the bond, and there abide by the order of court, or give bail to the satisfaction of the plaintiff, and apprehension of the court, to abide by the final issue and determination of the suit; 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 court, shall offer to become and give bail in manner aforesaid, in such case the bail for appearance only shall be discharged, and such defendant or defendants, shall be intitled to all the privileges of law, and in no other case whatsoever unless consented to, and agreed upon in open court, between the plaintiff and defendant, or their attorneys in their behalf.

And be it further enacted, that whenever any person shall be committed to prison, by virtue of any original writ issuing out of any Inferior Court as aforesaid, the Provost Marshal or his deputy, shall at the same time serve such prisoner or prisoners with a true copy of such writ or writs together with the indorsement thereon; and the plaintiff or his attorney, on the day after filing the declaration with the account or instrument in writing, on which the action is grounded as in the act prescribed, shall also serve such defendant or defendants with a true copy of such declaration, as filed against them in the clerks office, and that unless he employes an attorney to plead thereto, according to the rules herein prescribed, judgement will be entered against him by default; the service of which notice shall be deemed sufficient by leaving the same with the keeper of the prison or his deputy, 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 plaintiffs attorney (if no appearance of the defendant) upon producing a copy of such notice and affidavit of the due service thereof as aforesaid; Judgement 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 or account proved) now depending or hereafter to be brought in the courts, wherein the defendants have or shall suffer defaults, the said courts are hereby empowered and required in lieu of a Writ of Enquiry of Damages, to order a jury to be sworn, to assess 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, that all writs of summons hereafter to be issued, and all other original writs, shall be indorsed, either by the plaintiff or his attorney, who sues out the same, and the defendant or defendants therein named, shall respectively be served with a true copy of such writ.

And be it further enacted, that when any person or persons shall think himself aggrieved by any judgement or determination, in any of the said Inferior Courts of Common Pleas, wherein the cause of action exceeds the sum of five pounds, or in any cause where the title of lands may be in question he may appeal from such sentence and judgement to the Supreme Court held for this Province, for a rehearing of his said cause, either in matters of law or facts; Provided, that such appellant enters his appeal before the rising of the said Inferior Court, that the adverse party may have notice; and likewise enter into a recognizance with the appellee in any sum, not less than twenty pounds, to prosecute his appeal with effect, and files the same with the clerk of said court within five days after the rising of said court, otherwise execution shall issue from the said court according to their judgement and determination.

And be it further enacted, that the form of writs to be issued by the Justices of the Peace for the recovery of small debts, shall be by summons only, in the following form.

County of _____

To the Provost-Marshal or his deputy, Greeting.

In His Majesty's name you are hereby commanded to summon, A. B. of _____ if he may be found in your precinct, to be and appear before _____ His Majesty's Justices of the Peace for said county, at the dwelling house of _____ on _____ day, being the _____ day of _____ at _____ of the clock in the _____ noon, then and there to answer to C. D. of _____ in a plea to the damage of the said C. D. as _____ says the sum of _____ which he will then and there make appear; and do you make due return of this summons, with your doings thereon to _____ on or before said day witness hand and seal this _____ day of _____ in the _____ year of His Majesty's reign, annoque domini 17_____

A copy of which shall be left with the defendant at his last place of abode, at least seven days before the trial.

From: British North America Legislative Database; University of New Brunswick
bnald.lib.unb.ca

And be it enacted, that all writs of execution issued by the said Justices, shall run against the goods and chattels of the defendant, and for want thereof to take the body of the said defendant.

And be it enacted, that this Act, shall continue and be in force for the space of two years from the publication thereof, and from thence to the end of the next session of the General Assembly.

Published according to law, the 28th day of November 1763.