

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Tuesday the 28th day of May 1765, in the Fifth Year of His Majesty's Reign, and there continued by several Prorogations, to Tuesday the Third Day of June, 1766, in the Sixth Year of His Majesty's Reign.

6 George III – Chapter 8 (Session 1)

An Act for prescribing the Forms of Writs and the Manner of issuing the same.

Be it enacted by the Commander in Chief, the council and assembly, that all processes and writs for the bringing any suit into any of the courts of justice within this province, shall issue out of the clerk's office of the same court, where the cause is to be tried, under the seal of the said court in his Majesty's name, and be directed to the Provost Marshall or his deputy, and if such process or writs be against the Provost-Marshall, then it shall 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 province, and be executed by the officer and officers to whom they shall be directed. Provided always, that all local actions or where the plaintiff and defendant shall both reside in one county, in that case the action shall commence and be tied in the inferior court of that county.

And be it further enacted, that all processes and writts, as well original as judicial issuing out of the clerk's office of the respective courts, shall bear teste of the first justice, and upon any vacancy by death or removal, or other impediment then of the justice next named in the commission for the time being; and all original process in the said courts shall be by summons or attachment, or *capias ad respondendum*, and shall be made returnable twelve days before the sitting of the said court, and shall be executed at least fourteen days before the sitting of the said court, to which the same is returnable, (except such writts as are served in other counties, or in any other part of the province distant from the county wherein the cause is commenced, which may be returned at any time during the sitting of the court) and that the forms herein prescribed shall be the form of the original summons, writ of attachment, *capias ad respondendum*, writ of execution, and writ of *habere facias possessionem*.

FORM OF THE SUMMONS

L. S. ff. George the Third, by the Grace of God, of Great-Britain, France, and Ireland,
King, Defender of the faith, &c.

We command you that you summon A. B. of C. in our county of _____ (occupation) if he may be found in your precinct, to be and appear before our justices of our court next to be held at Halifax, (or other county town,) on the day of _____ next, then and there to answer the suit of C. D. of _____ in the county of _____ to the damage of the said C. D. as he says the sum of _____ pounds. Hereof fail not and have you then there this

writt with your doings thereon according to law, upon the _____ day of _____ next.
Witness _____ Esq; this _____ day of _____ in the _____ year of our reign,
Annoque Domini.

Clerk.

FORM OF AN ATTACHEMENT

L. S. ff. George the Third, by the Grace of God, of Great-Britain, France, and Ireland
King, Defender of the Faith, &c.

To the Provost-Marshal or his Deputy, Greeting.

We command you to attach the goods, chattels or estates of A: B: of C: within the county of _____ (occupation) to the value of _____ pounds, and for want thereof to arrest the body of A: B: if he may be found in your precinct, and him safe keep; so that he may be had before the justices of our court next to be held at _____ on the _____ day of _____ next, then and there to answer to the suit of C: D: of _____ to the damage of the said C: D: as he says, the sum of _____ pounds, and have you there this writ with your doings thereon according to law, upon the said _____ day of _____ next. Witness _____ Esqr; this _____ day of _____ in the _____ year of our reign, Annoque Domini.

Clerk.

FORM OF THE WRIT OF CAPIAS AD RESPONDENDUM IMPOWERING THE SHERIFF TO ARREST.

L. S. ff. George the Third, by the Grace of God, of Great-Britain, France, and Ireland
King, Defender of the Faith, and so forth.

To the Provost Marshall or his deputy, Greeting.

We command you, that you take A: B: of _____ if he may be found in your precinct, and safely keep him so that you may have him before us in our _____ supream/inferior court _____ on the _____ day of _____ to answer to C: D: of _____ of a plea, that whereas the said A: on the _____ day of _____ (as in the declaration) did assume, &c. _____ to the damage of _____ pounds as is said, and have you then this writ. Witness, &c.

And be it further enacted, that before such process shall be served, the plaintiff or his attorney shall indorse his name thereon, and annex to such process a copy of his declaration, with which the defendant shall be served, as also a copy of the original process at least fourteen days before the sitting of the court, or left at the defendant's house or last place of abode, which shall be judged a sufficient service; and that all goods, chattels or

estate attached by the officer, shall remain under such attachment for the space of thirty days after judgement given, that execution on may be thereon levied.

Provided always, that in all cases where it may be necessary to set forth several counts in a declaration, that then it shall and may be lawful for the plaintiff to file his declaration with the clerk of the court, and to cause the defendant to be served, with a copy of the same at least four days before the sitting of the court, at the expence of the plaintiff.

Provided nevertheless, that the sheriff or officer serving such attachment shall make an account in writing of the several articles of goods and chattels so attached, and shall permit the same to remain on the premises for the use of such party as shall appear to be intitled to the same upon the event of the cause, and if the person so attached shall alien the same in the mean time, such alienation shall be void, and such person shall be liable to the penalty of fifty pounds, to be recovered by action of debt or information in any court of record, the one moiety to be paid to the prosecutor, the other moiety to his Majesty for the uses of this government.

FORM OF EXECUTION

L. S. ff. George the Third, by the grace of God, of Great-Britain, France, and Ireland
King, defender of the faith, &c.

To the Provost Marshal or his deputy, Greeting,

Whereas A: B: of _____ within our county of _____ (occupation) by the consideration of our justices of our _____ court held at _____ on the _____ day of _____ last, recovered judgement against C: D: of _____ for the sum of _____ pounds, _____ shillings, and _____ pence; debt or damage, and the sum of _____ pounds _____ shillings, and _____ pence, cost of suit as it appears to us of record, that of the goods, chattels, lands, or tenements of the said to the said A: B: at the value thereof in money, the aforesaid sums, being _____ pounds, _____ shillings and _____ pence, and thereof also to satisfy you for your own fees, and for want of goods, chattels, lands or tenements of the said C: D: to be by him shewn unto you or found within your precinct to the acceptance of the said A: B: to satisfy the sums aforesaid; we command you to take the body of the said C: D: and commit unto our gaol in _____ and detain in your custody within our said Gaol, until he pays the full sums abovementioned with your fees, or that he be discharged by the said A: B: the creditor or otherwise by order of law. Hereof fail not and make return of this writ with your doings thereon into our said court of _____ upon the _____ day of _____ next. Witness _____ Esqr; at _____ the _____ day of _____ in the _____ year of our reign, Annoque Domini.

Clerk.

And be it further enacted, that when goods or chattels of any debtor are taken in execution, the same shall be valued and appraised by at least three appraisers under oath, and shall be sold at public vendue, ten days notice being first given, of such intended sale; and all lands taken in execution, shall be valued, levied, extended and sold according to the laws of this province.

FORM OF THE WRIT OF HABERE FACIAS POSSESSIONEM.

L. S. ff. George the Third, by the Grace of God, of Great Britain, France, and Ireland
King, defender of the faith, &c.

To the Provost Marshall or his deputy, Greeting.

“Whereas A: B: of _____ before our justices of our _____ court of _____ holden for or within our county of _____ aforesaid, at _____ upon the _____ day of _____ by the consideration of our said court, recovered judgement for his title and possession of _____ and in certain messuage or tenement with the appurtenances, or _____ acres of land, &c. lying and being in the town of _____ against E & F: of _____ who had unjustly withheld, put out or amoved the said A: B: from his possession thereof, and also at the said court recovered judgement for _____ pounds _____ shillings, and _____ pence, for costs and damages which he sustained by reason of the same, as to us hath been made to appear of record. We command you therefore, that without delay you cause the said A: B: to have possession of and in the said messuage or tenement with the appurtenances thereof, or said _____ acres of land &c. We also command you that of the goods, chattles, or lands or tenements of the said E: F: within y our precinct, at the value thereof in Money, you cause the said A: B: to be paid and satisfied the aforesaid sum of _____ pounds _____ shillings and _____ pence, which to the said A: B: was adjudged for his costs and damages, with two shillings more for this writ, and therefore also to satisfy yourself for your own fees, and for want of such goods, chattels, lands, or tenements of the said E: F: to be by him shewn unto you or found within your precinct to the acceptance of the said A: B: to satisfy the aforesaid sum.” We command you to take the body of the said E: F: and him commit unto our goal in _____ in our county of _____ aforesaid and detain in your custody, within our said goal in _____ until he pay the full sum above mentioned with your fees, or that he be discharged by the said A: B: or otherwise by order of law, hereof fail not, and make return of this writ with your doings thereon, unto our said _____ court of _____ to be holden at _____ upon the _____ day of _____ next witness _____ Esqr; at _____ the _____ day of _____ in the _____ year of our reign, Annoque Domini.

Clerk.

And be it further enacted, that it shall be in the power of any plaintiff or defendant to maintain or defend his cause of suit in his own proper person, according to the rules and practice of the court, or by his attorney; and that this act shall continue and be in force, for

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the space of two years, from the publication hereof and until the end of the session of the general assembly then next following.

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