

*At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on the Fifth Day of December, 1785, in the Twenty-Sixth Year of the Reign of Our Sovereign Lord George the Third, of Great Britain, France, and Ireland, King, Defender of the Faith, &c. and there continued by several Prorogations until the Sixth Day of June, Anno Domini 1792, in the Thirty-Second Year of His Majesty's Reign; being the Seventh Session of the Sixth General Assembly convened in the said Province. From Richard John Uniacke, The Statutes at Large passed in the General Assembly held in His Majesty's Province of Nova Scotia: A complete index and abridgement of the whole. John Howe and Son, 1805.*

32 George III – Chapter 14

**An Act to regulate the Summary Trial of Actions before his Majesty's Justices of the Peace, in the Town and Peninsula of Halifax.**

Be it enacted, by the Lieutenant Governor, Council and Assembly, that from and after the publication hereof, three of the justices of the peace, for the county of Halifax, to be taken in rotation, in the manner herein after mentioned, shall compose a court, for the summary trial of all civil actions or suits, which shall be commenced in the said town or peninsula of Halifax for any matter or thing whatsoever, for the trial whereof cognizance is given to one or more of His Majesty's justices of the peace; and it shall and may be lawful for the justices of the general sessions of the peace, for the said county, in their sessions from time to time, as occasion shall require, to appoint a fit and proper person to act as a clerk to the said court of justices, so to be appointed as aforesaid, who shall be sworn faithfully to discharge the duties of such office.

II. And be it further enacted, by the authority aforesaid, that the said justices shall immediately on the publication hereof, at a special sessions to be holden for that purpose, appoint the first three justices, named in the commission of the peace for the said county, to attend as justices of the said court for one calendar month, then next following, and shall nominate a clerk, and shall provide a proper and suitable place for the same to be publicly held, at the times, and in the manner herein after directed, and shall cause the names of the justices so appointed, and the name of the clerk, with his place of residence, to be advertised in the public newspapers of the said town, together with the place and times, where, and when, such court is to be held.

III. And to be the end, that the duty intended to be imposed by this act, be equally distributed, be it therefore enacted, by the authority aforesaid, that the said clerk, shall within three days before the expiration of the first calendar month, in which the court to be established by this act, shall have been held, summons, or cause to be summoned, the next two of the said justices, as they stand in order in the said commission: which said two, shall, together with the junior of the three last before appointed, (whose service for that purpose is hereby required accordingly,) attend, and do the business of the said court, for the succeeding calendar month, and so the like number of justices, as they stand next to the former in rotation, together always with the junior of the three last before summoned, or

setting to do the like duty from calendar month to calendar month, for each succeeding calendar month, till the whole number shall have been summoned, and then begin again with the first of the said justices in the order aforesaid, and continue to summon two monthly in like rotation, during the continuance of this act, so as that the justices for the time being may according to the order in which they shall stand in the said commission, take upon themselves and put the powers in this act contained in due execution.

IV. Provided always, that as often as it shall happen, that the two justices so next in rotation as aforesaid, are neither of them of the quorum, the said clerk shall give notice to such one of the three, then holding the said court, as shall be of the quorum (beginning always with the junior) to attend the said duty for the month then next ensuing. And in case one or more of the justices so appointed, or summoned, should die, or be otherwise prevented by a cause to be allowed by a majority of three justices next in rotation in the said commission, from attending the duty to be imposed by this act, then the said clerk shall forthwith summon, or cause to be summoned, the next in rotation, whose attendance is hereby required accordingly: and such person or persons so attending and doing the duty of the said court, for the residue of the month then not expired, shall be deemed, and taken, to have served for one calendar month, to every intent and purpose of this act.

V. And be it further enacted, by the authority aforesaid, that nothing herein contained shall extend, or be construed to extend, to oblige such person or persons who are named in the said commission by virtue of their feats in His Majesty's council for this province, or as holding certain offices, and who have not usually acted in the said commission of the peace, or who do not usually reside within the town and peninsula of Halifax, to take upon themselves the duties of the court intended to be established by this act, or to subject them to be summoned to the discharge thereof; and that it shall and may be lawful for any justice of the peace, being one of the persons holding the said court, to substitute another to attend for him at any time or times to do the business of the same, without cause to be allowed as herein before mentioned.

VI. And be it further enacted, by the authority aforesaid, that the said justices, so from time to time to be appointed to hold a court as aforesaid, shall hold the same publicly at the place so to be appointed as aforesaid, twice in every week, to wit: on Tuesdays and Fridays; and shall have full power and authority, by virtue of this act, to administer an oath, as well to the parties as their witnesses, and hear and determine all causes brought before them, of which they shall have jurisdiction, according to equity and good conscience, regarding the true merits of the case; and shall cause a fair entry, which shall be signed by the said justices, to be made in a book by the clerk of the said court, of the nature of every case brought before them, and of the evidence produced and examined by both parties, together with the judgment given therein; and shall likewise enter with each cause a particular account of the fees, and cost allowed to be recovered by either party, and shall, in all respects, have, use and exercise, the same power and authority, relative to proceeding in such causes, and granting executions, as has heretofore been exercised, and used by His Majesty's justices of the peace, under, and by virtue of, the several acts of the province, for the trial of summary

actions; and all writs, processes and executions, out of the said court, shall be issued by the clerk of the same should issue so short a time before the day appointed for its sitting, that such writ, process or execution, could not be executed in time, then, and in such case, the same to be made returnable the next day appointed by this act for the sitting of the said court, and it shall not be lawful for the said court to delay, or put off, the hearing of any cause, at the request of either party, but shall immediately proceed to hear and determine the same on the return of the writ or process; unless the party, wanting a continuance, do set forth, by affidavit, good cause for granting the same; and in case there shall be more causes before the said court than can be determined in one day, then the said court may adjourn from day to day, until every cause shall be disposed of according to law; and the clerk of the said court shall give regular attendance in a public office, to be by the said sessions appointed for that purpose, during the hours each day to be regulated and fixed by the said court of sessions; and the said justices, in their sessions, shall quarterly examine the entries and proceedings of the said court, and take special care that the same be kept regularly, and in good order, agreeable to the true intent and meaning of this act.

VII. And be it further enacted, by the authority aforesaid, that if any person or persons shall think themselves injured by the judgment of the said court, he, she or they, may appeal to the next inferior court of common pleas, to be held for the said county, and on such appeal being made, the said court shall suspend the issuing of execution, or further proceeding in such cause, on the party appealing, giving good and sufficient security to prosecute such appeal at the next inferior court of common pleas, and to perform whatever the judgment of such court shall be, and the clerk of the said court, to be appointed for the trial of summary actions, as aforesaid, shall, on the first day of each sitting of the inferior court of common pleas, for the county aforesaid, return to the said court a list of all causes, in which appeals have been entered, and the said court shall appoint a day for hearing thereof, and if the party appealant shall not appear to prosecute the same, such appeal shall be dismissed, but if the parties appear, then the said court shall proceed to try the said cause over again, upon the evidence as entered and certified by the clerk below, and to give judgment thereon, which judgment, the said clerk of the said court, shall enter in the book, wherein the cause and the first judgment thereon was entered, which entry shall be signed by the justices present; and in case the justices of the inferior court shall dismiss said appeal, or shall affirm the judgment given by the court that first tried the cause, and shall be of opinion, that such appeal was made without any reasonable cause or foundation, but for delay, or vexation, then it shall and may be lawful for the said justices to give judgment against the appealant, for a sum not exceeding thirty shillings cost, in addition to the amount of the first judgment, which additional cost shall be distributed in the manner the said justices shall appoint; but if there appears reasonable cause for such appeal, then no additional cost shall be paid by the appealant, and no writ of certiorari, or habeas corpus cum causa, shall be allowed or brought to set aside any determination or order respecting such causes as aforesaid.

VIII. And be it further enacted, by the authority aforesaid, that from and after the publication hereof, it shall not be lawful for any justice of the peace, within the town and peninsula of Halifax, finally to commit any person to jail, or to the house of correction, who

shall be charged with any breach of the peace, or any criminal offence, of any kind or nature soever, but if such justice shall, on his own view, or other good information, cause any breaker or breakers of the peace, or criminal offender or offenders of any kind whatsoever, to be apprehended, such persons, when apprehended, shall immediately be carried before the justices, to be appointed to set as a court for the trial of summary actions, if such court be sitting, and if the same be not sitting, then it shall and may be lawful for such justice, or justices, to commit the offender, or offenders, so apprehended, for further examination, and the sheriff, jailor, keeper of the house of correction, or other person to whose custody such offender or offenders shall be committed for examination, shall immediately give notice thereof to the clerk, to be appointed as aforesaid, who shall notify the said justices appointed to hold the said court, and such justices, together with the justice or justices who committed such offender, or offenders, if such justice or justices shall think fit to attend, shall assemble as soon as possible, and shall cause the offender or offenders, so committed for further examination, to be brought before them, together with all witnesses, and other persons having any knowledge of the premises, and shall proceed to a public examination of all concerned; which examination, together with the testimony of all witnesses, examined on oath, shall be correctly and fairly entered in writing by said clerk, and signed by the justices present, and after the said justices shall have finished such examination, and entered the same in writing, as aforesaid, then such justices shall proceed to dispose of such offender or offenders as the law directs, and shall return the examinations, so taken, in due time to the court, to which the cognizance of the offence, or offences, shall properly belong.

IX. And be it further enacted, by the authority aforesaid, that the fees to be allowed and paid for any business whatsoever, to be transacted as aforesaid by the justices, so to be constituted a court as aforesaid, shall be the same as the law allows to be paid for the like service when done by a single justice; and all fees of every kind, payable for services done and performed therein, shall be received by the said clerk, who shall keep an exact and regular account thereof, which account the said clerk shall state quarterly, on oath, and deliver the same to the justices in their sessions, quarterly, and the said justices shall apply so much of the proceeds of the whole thereof, as shall be necessary to pay the said justices, for their attendance, the said clerk, and all other charges which may arise, or be necessary to go to, for the holding and establishing of the said court, and shall apply the overplus thereof to such general uses as the said justices shall from time to time think necessary for the preservation of the peace and good order of the said town and peninsula.

X. And be it further enacted, by the authority aforesaid, that no judgment or proceeding can be given or had in the said justices' court, but with the consent of two at least of the justices, to be appointed judges thereof as aforesaid, and two of the said justices shall be a quorum to hold said court, and the process, warrants and executions, of the said court, shall extend throughout the county of Halifax, in the same manner, and with the same effect, with the process, warrants and executions, of one or more justices of the peace for the said county as aforesaid.

XI. And be it also further enacted, by the authority aforesaid, that this act shall continue and remain in force, for, and during the term of, one year, from and after the publication hereof, and no longer.