

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on the Twentieth day of March, 1793, and continued by several Prorogations to the Sixth Day of June, Anno Domini 1794, in the Thirty-Fourth Year of the Reign of Our Sovereign Lord George The Third of Great-Britain, France, and Ireland, being the Second Session of the Seventh 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.

34 George III – Chapter 10

An Act for providing for the Trial of Issues, by Justices of Nisi Prius, in the Counties of Sydney, Lunenburg, Queen's County, and Shelburne.

Whereas it is highly expedient for the due administration of Justice, that courts of nisi prius, should be established in the several counties in this province, in which His Majesty's supreme court are not now by law, authorised to sit:

I. Be it enacted, by the Lieutenant-Governor, Council and Assembly, that when and so often as any issue or issues shall be joined in His Majesty's supreme court, which issue or issues ought, by the law of the land, to be tried in the respective counties of Sydney, Lunenburg, Queen's County and Shelburne, it shall and may be lawful for the Governor, Lieutenant-Governor, or Commander in Chief for the time being, to assign one or more justice or justices of the supreme court, joining, with him or them, one or more of the justices of the inferior court, for the particular county, to try such issue or issues in and by a jury of the county, in which the venue or venues shall respectively be laid; which justice or justices shall proceed to try such issue or issues in the same manner, and shall have, use and exercise, all the powers and authorities which the justices of nisi prius do have, use or exercise, within the realm of England, and shall be entitled to be reimbursed such extraordinary expences as shall have been incurred in the hiring of vessels for the purpose of conveying such justice or justices to the county where such venue shall be laid as aforesaid, if no passage boat, or proper accidental conveyance, offer to convey them as aforesaid.

Provided always, that when and so often as His Majesty's dominions shall be at war with any other kingdom, state or power, it shall and may be lawful for the Governor, Lieutenant Governor, or Commander in Chief for the time being, by and with the advice of the council, to defer issuing any commission for such purpose until it shall appear safe and expedient for him so to do, any thing in this act to the contrary notwithstanding.

II. Be it further enacted, by the authority aforesaid, that as soon as the day shall be appointed for the justices, to repair to any or either of the aforesaid counties, for the trial of any issue or issues, so to be joined as aforesaid, it shall and may be lawful for the plaintiff in such action, or his attorney, to sue out of the said Supreme Court, a writ of venire facias, directed to the sheriff of the county, wherein such issue or issues is, or are, to be tried, commanding him to have, on the day so to be appointed, at the court-house within his

county, thirty six persons, qualified to serve as petit jurors, who shall be drawn in the manner directed by the several laws of this province, for regulating juries, and declaring the qualifications of jurors, in the presence of one of the justices of the inferior court of common pleas, in such county, the sheriff thereof, and the prothonotary or clerk of such inferior court, and shall be by such sheriff summoned to attend at the time and place in the said venue commanded.

And whereas there are at present no practicable roads from Halifax, to the several counties herein before mentioned, by reason of which, the Justices so to be assigned, may not be able to attend at the places, and on the day so to be appointed, as aforesaid:

IV. Be it therefore enacted, by the authority aforesaid, that in case such justice or justices, so to be assigned as aforesaid, shall not arrive at the places and the times to be appointed as aforesaid, it shall and may be lawful for the sheriff of the county, to respite the attendance of all jurors, parties, witnesses, and other persons summoned or bound to attend at the time and places aforesaid, from day to day, until such justice or justices shall arrive, which justice or justices, shall then proceed to try such issue or issues, as are by him triable by virtue of his commission.

V. Be it further enacted, by the authority aforesaid, that it shall and may be lawful, for the chief justice of His Majesty's supreme court, for the time being, from time to time to appoint such fit and proper persons, as he shall think proper, to be clerk or clerks to the court of nisi prius, hereby established in the several counties herein mentioned, and the said supreme court shall and may, from time to time, make and ordain such ordinances and rules as to their discretion may seem meet, to regulate the practice of the said courts, and for the effectual administration of justice in and by the same.

VI. Be it further enacted, by the authority aforesaid, that the clerk or clerks of nisi prius, to be appointed by the chief justice aforesaid, shall and may sign and seal writs of capias, summons, and all other writs returnable into the said supreme court, or into the said court of nisi prius, and shall and may take the affidavit or affidavits of any person or persons, for the purpose of holding to bail, or attaching the property of, any defendant or defendants, and shall and may indorse writs of capias ad respondendum, or attachment, upon such affidavit or affidavits in the same manner as the justices of the supreme court are by law authorised and directed to indorse the same.

VII. And be it further enacted, by the authority aforesaid, that it shall and may be lawful for the said chief justice, by warrant under his hand and seal, to appoint in any of the counties of this province, such fit and proper persons, as he shall think convenient, to be commissioners to take affidavits, to be used in all causes subsisting, or which hereafter may be instituted, in his Majesty's supreme court, or in the said court of Nisi Prius, hereby established.

VIII. And be it further enacted, by the authority aforesaid, that it shall and may be lawful for the justices of the supreme court in all cases wherein they shall think proper, to tax such reasonable counsel fee or fees, not exceeding the sum of five pounds, to be paid by the party against whom a verdict shall pass in any cause tried before them, as they shall think proper.

IX. And be it also further enacted, by the authority aforesaid, that so much of this act as respects the establishment of courts of nisi prius, shall continue and remain in force for and during the term of three years, from and after the publication hereof, and until every issue actually joined at the expiration of such term shall have been disposed of, and no longer.