

*At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on the Eighteenth day of November, 1806, and continued by several prorogations to Thursday the third day of December, 1807, in the Forty-eighth year of the Reign of our Sovereign Lord George the Third, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith &c. &c. being the Second Session of the Ninth General Assembly, convened in the said Province. From Henry H. Cogswell, The Statutes at Large passed in the General Assembly held in His Majesty's Province of Nova Scotia: from the Sixth Session of the Eighth General Assembly, to the Fifty-Sixth year of his Majesty's Reign. John Howe and Son, 1816.*

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### **An Act for the Summary Trial of Actions.**

Be it enacted, by the Lieutenant-Governor, Council and Assembly, that the Supreme Court and the Inferior Courts of Common Pleas within this Province, be and are hereby empowered, in all causes of action brought before them, the sum total whereof shall not exceed twenty pounds, to proceed in a summary way, by witnesses, to examine the merits of such causes, and make up judgment accordingly.

Provided always, that when on the examination of the witnesses the matter of fact shall appear doubtful, or either of the parties shall desire it, the court shall order a jury to try the same.

II. And be it further enacted, that it shall be lawful for any person or persons, who have debts owing to him, her or them, by any other person or persons where the whole dealing or cause of action shall not exceed five pounds, to sue for the same in the manner following, that is to say, if the sum demanded shall not exceed three pounds, to cause such debtor to be summoned to appear before any one justice of the peace of the county or district where the debtor shall reside; and if the sum demanded shall be more than three pounds, but does not exceed five pounds, to cause such debtor to be summoned to appear before any two justices of the peace of the county or district, where the debtor shall dwell; and the said justice or justices after such summons issued and duly served, is and are hereby empowered to proceed to and make up final judgment between the parties, and shall allow the defendant to produce his account against the plaintiff, or any receipts or other discharges for payment made either in the whole or in part; and the said justices or justices shall examine and enquire into the merits of both accounts and of such discharges, and by such other proof as to him or them shall seem requisite, or upon the confession of the debtor, to ascertain the debt due, and at his or their discretion to decree the payment thereof, at such different times and periods as he or they shall think fit and proper, agreeable to the circumstances of the debtor, and with as little prejudice as possible to the creditor, and to award costs as he or they shall find, whether for the plaintiff or defendant, without appeal, unless the debt or cause of action shall amount to twenty shillings or upwards; any law, usage or custom, to the contrary notwithstanding.

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III. And be it further enacted, that if any debtor, after being duly summoned to appear, shall without just cause, to be allowed of by the said justice or justices, refuse or neglect to perform such degree or judgment as shall be made concerning such debts as aforesaid, it shall and may be lawful for such justice or justices, to issue execution against the goods and chattels or body of such debtor, for the sum awarded, with costs: which execution shall be returnable in fourteen days from the day on which it shall be issued; any law, usage, or custom, to the contrary notwithstanding.

IV. And be it further enacted, that if any plaintiff or defendant, when the debt or cause of action shall amount to twenty shillings or upwards, shall think himself injured by the judgment of the said justice or justices, he may appeal to the next supreme court, or inferior court of common pleas, to be held for the county or district in which the said justice or justices reside, and on such appeal being made, the said justice or justices 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 supreme court, or inferior court of common pleas, and to perform whatever the judgment of such court shall be, and the justice or justices shall on the first day of the sitting of the said supreme court or inferior court of common pleas, return to the said court to which the appeal shall be made, the names of the parties to the cause in which an appeal hath been entered, with all the papers touching and concerning the same, and the said court shall appoint a day for hearing thereof, and if the party appelland shall not appear to prosecute the same the first term such appeal shall be dismissed with costs, but if the parties appear, then the said court shall proceed to try the said cause in a summary way, and to give judgment thereon, and award costs whether for the appellant or appellee as the judgment may be, which judgment shall be entered up as other judgments in summary causes are in the said court, and no writ of certiorari or habeas corpus cum causa, shall be allowed or brought to remove any judgment given in such causes upon appeal as aforesaid.

V. And be it further enacted, that it shall and may be lawful for any justice of the peace, where the debt shall not exceed three pounds, and for any two justices of the peace, where the debt shall be more than three pounds, and shall not exceed five pounds, upon application to him or them, and on oath being made in writing before him or them, of such debts, in the way usually practiced where the debts are of greater value, to issue a capias to arrest the body of the debtor or debtors, and to hold them to bail for his or their appearance, and to make the same returnable in four days, at the expiration of which he or they shall proceed to trial, unless the defendant shall consent to try the same sooner, and give judgment thereon as in ordinary cases.

Provided always, that no person shall be arrested in any case for a debt due by him under twenty shillings, nor for any larger debt not exceeding five pounds, unless in addition to an affidavit of the debt, the party applying shall also make oath, that he verily believes that unless such capias is allowed the debt will be lost.

VI. And be it further enacted, that no action for any debt where the whole dealing or cause of action does not exceed three pounds, shall be brought against any person, in any court of law in this province except by appeal.

VII. And be it further enacted, that nothing herein contained shall extend, or be construed to extend, to take away the jurisdiction of the supreme court, or court of common pleas, in cases above three pounds, and not exceeding five pounds, where the matter shall be of a difficult nature, but that if any suit shall be brought in either of the said courts, to recover any debt above three pounds, and not exceeding five pounds, the party plaintiff shall not be entitled to recover any costs, unless the judges of such court, respectively, shall determine that the cause of such action was of a nature unfit to be tried before two justices of the peace, or it shall appear to the said court, that there were not two justices of the peace living within a convenient distance of the parties, and of each other.

VIII. And be it further enacted, that the forms of writs to be issued by justices of the peace shall be as follow:

Form of the Summons:

To \_\_\_\_\_

You are hereby required to summon A. B. of \_\_\_\_\_ to appear before \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, in the \_\_\_\_\_ to answer to C. D. in the sum of \_\_\_\_\_ and make return hereof on or before said day.

Witness my hand and seal the \_\_\_\_\_

Capias.

To either of the Constables of \_\_\_\_\_

You are hereby commanded to take A. B. of \_\_\_\_\_ and him safely keep, so that you have him before \_\_\_\_\_ at \_\_\_\_\_ on the \_\_\_\_\_ of \_\_\_\_\_ to answer to C. D. in \_\_\_\_\_ Hereof fail not, and have then there this writ. Given under \_\_\_\_\_ hand and seal at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_

Execution.

To \_\_\_\_\_

Whereas judgment hath been awarded against A. B. of \_\_\_\_\_ at the suit of C. D. \_\_\_\_\_ for the sum of \_\_\_\_\_ and \_\_\_\_\_ more for costs, these are to command and require you, to levy from off the goods and chattels of the said A. B. the said sums, making together \_\_\_\_\_ by sale of the said goods and chattels; and for want thereof you are hereby

commanded to take the body of the said A. B. and him to commit to his Majesty's jail in \_\_\_\_\_ there to remain until he pay the sum abovementioned, with your fees, or that he be discharged by the said C. D. or otherwise by order of law. Hereof fail not, and make return of this writ to be within ten days. Witness my hand and seal the \_\_\_\_\_

Which said writs of execution or capias, shall be directed to either the constables for the county or district, where such justice shall reside.

IX. And be it further enacted, that this act shall continue and be in force for the space of one year from the publication thereof, and from thence to the end of the next session of the general assembly.