

CAP. X.

An ACT for the Summary Trial of Actions.

Summary Trial
by Supreme
and Inferior
Court.

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.

Proviso.

Summary Trial
by Justices of
the Peace.

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 three 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 the said Justice, after such summons issued and duly served, is hereby empowered to proceed 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 Justice shall examine and enquire into the merits of both accounts, and of such discharges, and, by such other proof as to him shall seem requisite, or upon the confession of the debtor, to ascertain the debt due, and, at his discretion, to decree the payment thereof at such different times and periods, as he 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 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.

Execution may
be issued by
Justices.

III. *And be it further enacted,* That if any debtor, after being duly summoned to appear, shall, without just cause, be allowed of by the said Justice, refuse, or neglect, to perform such decree or Judgment as shall be made concerning such debts as aforesaid, it shall and may be lawful for such Justice to issue execution against the goods and chattles, 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.

Appeal from
the decision of
the Justices to
Supreme or
Inferior Court.

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, 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 resides; and on such appeal being made, the said Justice 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 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

said Court shall appoint a day for the hearing thereof; and if the party appellant shall not appear to prosecute the same the first term, such appeal shall be dismissed, with costs; but if the party 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, upon application to him, and on oath being made in writing before him, of such debts, in the way usually practised where debts are of greater value, to issue a Capias to arrest the body of the debtor or debtors, and hold them to bail for his or their appearance, and to make the same returnable in four days; at the expiration of which he shall proceed to trial, unless the defendant shall consent to try the same sooner, and give Judgment thereon as in ordinary cases.

Capias may be issued by Justices.

VI. *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 three pounds, unless, in addition to the affidavit of the debt, the party applying shall also make oath, that he verily believes, unless such Capias is allowed, the debt will be lost.

Proviso.

VII. *And be it further enacted*, That the forms of Writs to be issued by the Justices of the Peace shall be as follow:

FORM OF THE SUMMONS.

To either of the Constables

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 _____ Hand and seal, the

Form of Summons to be issued by Justice of Peace.

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 _____

Form of Capias

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 chattles of the said A. B. the said sums, making together by sale of the said goods and chattles, and for want thereof, you are hereby commanded to take the body of the said A. B. and him commit to His Majesty's Jail in _____ there to remain till he pay the sum above mentioned, 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 _____ within ten days. Witness _____ Hand and seal, the

Form of Execution.

Which said Writs of Execution, Summons or Capias, shall be directed to either of the Constables for the County or District where such Justice shall reside.

Writs—to whom directed.

VIII. *And be it further enacted*, That it shall and may be lawful for the Governor, Lieutenant-Governor

Three Commissioners may be appointed to

each Township
--power limited.

Governor, or Commander in Chief for the time being, to appoint and Commission three fit and proper persons in each Township, or in each Place or Settlement not within any Township in this Province; which three persons appointed as aforesaid, or any two of them, shall have power, within the Township or Place for which they shall be commissioned, to hear and determine all actions of debt, or actions arising upon contract, when the whole dealing and cause of action is not less than three pounds, and does not exceed ten pounds.

Commissioners
meet.

IX. *And be it further enacted*, That the persons so appointed and commissioned as aforesaid, after being sworn before some one of the Justices of the Interior Court of Common Pleas, for the faithful discharge of their duty, shall meet on the first Wednesday of March, the first Wednesday of June, the first Wednesday of September, and the first Wednesday of December, within the Township or Place for which the said persons shall be appointed; and shall be and are hereby empowered in all actions of debt, or actions arising upon contract, when the whole dealing and cause of action exceeds the sum of three pounds, and does not exceed the sum of ten pounds, to proceed to hear and try the same in a summary way by examining witnesses on oath, and to determine the same with the least possible delay, and to give Judgment thereon.

Appeal from the
judgment of the
Commissioners.

X. *And be it further enacted*, That if either party shall think himself injured by the Judgment of the said Commissioners, he may appeal to the next Supreme Court, or Inferior Court of Common Pleas for the County or District in which such Commissioners reside, and Execution shall be stayed if the party appealing shall give 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 said persons so commissioned as aforesaid shall, on the first day of the sitting of the said Supreme Court, or Inferior Court of Common Pleas, deliver to the said Court to which such 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 if the party appellant shall not appear to prosecute the same the first term, such appeal shall be dismissed, with costs; but, if the parties appear, the said Court shall try the said cause in a summary way, or by a Jury, if either party require the same, and give Judgment thereon, and award costs, whether for the appellant or the appellee, as the Judgment may be; which Judgment shall be entered up as other Judgments are in summary causes; 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.

Writs which
may be issued
by Commission-
ers.

XI. *And be it further enacted*, That the persons so to be appointed and commissioned as aforesaid, or either of them, may and shall issue Writs of Summons, Capias and Attachment. *Provided always*, That before the issuing of any Writ of Capias or Attachment, the party applying for the same shall make and subscribe an affidavit of the sum due to him, and that he verily believes, that unless such Capias or Attachment is allowed, the debt will be lost.

Judgments and
Executions of
Commissioners.

XII. *And be it further enacted*, That the Judgments given by the said persons so to be appointed and commissioned for each Township and place as aforesaid, shall be signed by a majority thereof; and the Execution issued thereon, shall be signed by the persons so signing the Judgment as aforesaid; and the said Executions shall be against the goods and chattles, or body, of the persons against whom Judgments shall be signed for the the sum awarded, and costs; which Executions shall be returnable on the first day appointed for the meeting of the said Commissioners next after issuing the same.

Forms of Writs
to be used by
Commissioners.

XIII. *And be it further enacted*, That the said Writs of Summons, Capias, Attachment and Execution,

Execution, which may be issued by the Commissioners as aforesaid, shall be according to such forms as shall be established by the Supreme Court, and shall bear test in the name of the person first named in the said commission, and the said Writs shall run throughout the County or District in which the Township or Place for which the said Commissioners shall be appointed is situate.

XIV. *And be it further enacted*, That nothing in this Act contained shall extend, or be construed to extend, to empower the said Justices or Commissioners to have jurisdiction of, or try, any actions of trover and conversion, or actions on the case, for words, or actions of trespass, of any kind or description whatsoever.

Justices and Commissioners not allowed to try actions of Trover, &c.

XV. *And be it further enacted*, That no action for debt, or upon contract, shall be brought in the Supreme Court, or any of the Inferior Courts of Common Pleas, except by appeal, unless the whole dealing, or cause of action, shall exceed ten pounds.

Causes under 10l. cannot be tried in Supreme Court—except appeal. Persons imprisoned by Commissioners.

XVI. *And be it further enacted*, That all persons imprisoned under process of the said Commissioners, shall be entitled to their discharge according to the provisions of the several Acts of this Province, relating to Insolvent Debtors.

XVII. *And be it further enacted*, That it shall not be lawful for any Justice or Justices of the Peace, to make any writ of Mesne Process, issued by him or them, returnable on any day during the sitting of the said Commissioners.

XVIII. *And be it further enacted*, That the said Commissioners shall not continue their respective meetings longer than two days.

Commissioner's Court—sittings limited.

XIX. *And be it further enacted*, That the following Fees, and no other, shall be taken by the said Justices, and the persons so to be appointed and commissioned, and by the Sheriff of the County or his Deputy, or the Constables of the several Townships or Places in this Province; which Sheriff and his Deputy, and the said Constables, are hereby required and directed to serve and execute all such Writs of Summons, Capias, Attachment and Execution, as the said Justices and the said Commissioners shall and may respectively and legally issue, under and by virtue of this Act, that is to say:—

Fees allowed—

To the Justices and Commissioners :

- For every Summons, two shillings.
- For every affidavit and Capias, three shillings.
- For every Affidavit and Attachment, three shillings.
- For every Subpœna to compel the attendance of witnesses, one shilling.
- For every Writ of Execution, one shilling.
- For every Trial and Judgment, (but not otherwise,) one shilling to each Justice, and each Commissioner.

To Justices and Commissioners

Sheriff or Constable :

- Service of Writ of Summons, Capias, or Attachment, one shilling.
- Travel to serve the same, three pence per Mile.
- Bail Bond, two shillings.
- Poundage if the Money is paid, three pence per pound.
- Poundage if property is taken and sold, six pence per pound.
- For every Writ of Execution, where the body is taken, one shilling
- Travel to execute the same, three pence per mile.

To Sheriff or Constable.

Witnesses :

Each day's attendance, two shillings and sixpence.

To Witnesses

Penalty for demanding greater fees.

XX. *And be it further enacted,* That if any Justice or Justices, Commissioner or Commissioners, Sheriff or Constable, shall ask, demand or receive, any other or greater fees than are herein allowed, he or they shall forfeit and pay a fine of five pounds, together with costs, to be recovered in any action or suit by him or them that will sue for the same in any Court of Record within the County where such greater fee or fees than are herein allowed shall have been received; which Court of Record shall hear and determine such action in a summary way.

Subpœnas may be issued by Commissioners

XXI. *And be it further enacted.* That the said Court shall have power to issue Subpœnas for the attendance of witnesses resident in any part of the County or District where such Commissioners shall sit, and to compel their attendance by such ways and means as are adopted by the Supreme Court.

Proviso.

XXII. *Provided always,* That this Act, and no part thereof shall extend, or be construed to extend, to the Town of Halifax, where Commissioners are appointed under and by virtue of an Act, passed in the last Sessions of the General Assembly, entitled, An Act for the Summary Trial of Actions.

Act of the last Session of General Assembly for the Summary Trial of Actions, continued for Halifax.

XXIII. *And be it further enacted,* That the said Act, passed in the last Session of the General Assembly, entitled, An Act for the Summary Trial of Actions, be continued, and in force, for the Town of Halifax, and the same is hereby continued and in force for the Town of Halifax for one year, and from thence to the end of the next Session of the General Assembly, and no longer.

Sheriff liable for over-holding monies received under Execution, &c.

XXIV. *And be it further enacted.* That if any Sheriff, Deputy-Sheriff, or Constable, shall levy or receive any sum or sums of money by virtue of any Execution, Writ, or Process, and shall detain the same in his hands for the space of twenty-four hours after the same shall have been demanded, then such Sheriff, Deputy-Sheriff, or Constable, shall forfeit to the party entitled to receive such sum or sums of money, for each and every week that he shall detain the same, the sum of five shillings for each and every pound which he shall so detain after demand made as aforesaid; to be recovered before any Justice of the Peace for the County or District where such Sheriff, Deputy-Sheriff, or Constable, shall reside.

Act continued one year.

XXV. *And be it further enacted,* That this Act shall be and continue in force for one year from the publication thereof, and from thence to the next Session of the General Assembly.

CAP. XI.

An ACT for new Executions to be sued against Persons who shall hereafter be delivered out of Execution by privilege of either House of the General Assembly, and for discharge of them out of whose custody such persons shall be delivered.

Preamble.

FORASMUCH as heretofore doubt hath been made if any person being arrested in Execution, and by privilege of either of the Houses of the General Assembly of this Province, set at liberty, whether the party at whose suit such execution was pursued, be forever after barred and disabled to sue forth a new writ of Execution in that case; for the avoiding of all further doubts and trouble which in like cases may hereafter ensue:

Execution may be issued after privilege ceases

I Be it enacted, by the Lieutenant-Governor, Council and Assembly, That, from henceforth, the Party, at or by whose suit such writ of Execution was pursued, his executors or administrators, after such time as the privilege of that Session of the General Assembly, in which such privilege shall be so granted, shall cease, may sue forth, and execute, a new writ or writs of Execution,