

Ordinances of the Lieutenant Governor and Council of His Majesty's Province of Cape Breton passed in the year 1785. National Archives of the United Kingdom CO 219/1.

25 George III – Chapter 7

An Ordinance for the more Easy and Speedy Recovery of small Debts

Be it Ordained and Ordered by His Excellency the Lieutenant Governor by and with the Advice and Consent of His Majesty's Council and by the authority of the same it is hereby Ordained and Ordered that all Suits for Debts and Demands wherein the amount of the whole Matters to be examined tried and determined shall not exceed the Sum of Five Pounds shall and may be cognizable before and heard tried and determined in a summary manner by any two or more Commissioners to be by his Excellency the Governor or Commander in Chief of this His Majesty's Island of Cape Breton and its Dependencies by Commission under His Prior Seal appointed according to the principles of Law and Equity.

And be it further Ordained and Ordered that such Commissioner or any two or more of them shall meet and hold a Court for hearing said causes once in any Week in each of the Districts of this Island and its Dependencies, that is to say on every Monday.

And be it further Ordained and Ordered that the Proceedings before the said Commissioners shall be by Summons Warrant of Distress against the Goods and Chattels of the Debtor or Warrant of Commitment upon the return of the Warrant of Distress of *Nulla bona* or an insufficiency to satisfy the whole Debt and Costs.

And be it further Ordained and Ordered that when either of the Parties shall desire it and tender to the Court the whole Costs to be Thereby incurred the said Court shall immediately cause a Jury of five lawful Persons to be immediately summoned and Sworn to hear such Cause and give an unanimous Verdict therein where upon the Court shall give Judgement according to the course of the common Law of England and the Laws and Ordinances of this Island not being repugnant thereunto and Issue Process of Executions in manner aforesaid.

Provided nevertheless that when either of the Parties shall think himself, herself, or themselves aggrieved by the Judgement of the said Court of Commissions such Party shall on motion be admitted to suspend execution of such Judgement upon entering into Recognizance to the use of the Adverse Party with one or more sufficient Surety or Sureties if by the Plaintiff in the Sum of Ten Pounds conditioned to remove said Cause by *Certiorari* all into the Supreme Court of Indicture in Supreme Court of common Pleas when such a Court shall be opened and perform the final Judgement there to be given if by the Defendant in the like Sum of Ten Pounds and the amount of the Debt Damages and Costs awarded against him by the said Commissioners conditioned in like manner to remove the said Cause by *Certiorari* into the Supreme Court at its then or next session and to perform the final Judgement there to be given.

And be it further Ordained and Ordered that His Majesty's Chief Justice of this Island shall be and is hereby authorized upon Petition of the Party after having given recognizance as aforesaid or in case the Judgement of the said Commissioners shall have been recorded upon like Petition and such Petitioner in being into a like recognizance before the said Chief Justice or a Commissioner for taking Affidavits Recognizances and Bail in the Sum of Ten Pounds Conditioned to perform the Judgement to be finally given in said Cause a Writ of *Certiorari* Directed to such Commissioners to remove the Process and Proceedings of such Cause into the Supreme Court of Judicature of Supreme Court of Common Pleas wherein the cause shall be reheard tried and determined in like manner as Causes originally instituted in and brought to Issue in such respective Supreme Court and Execution shall Issue thereupon, accordingly, And in Case the Party entering into the Recognizance as aforesaid shall neglect to sue out and Prosecute such Writ of *Certiorari* agreeable to such Recognizance upon Motion and affidavit in open Court and due Notice given to the adverse Party Process of Distress or Commissioners as the Case may require shall and may be issued by such respective Supreme Court for levying the amount of such Recognizance.

And be it further Ordained and Ordered that the said Commissioners for holding a Court for Trial of Summary Causes shall in each District appoint a Clerk of said Court who shall keep exact Minuets and Entries of Judgement of said Court in a book to be for that purpose kept and shall also keep other Process and Proceedings, make out Summonses and all Process and Precepts which shall run in the Names and be under the hands and Seals of any two or more of such Commissioners and every Summons shall be served on the Defendants by reading the same personally to him, her, or them or giving to such Defendant or leaving at his, her, or their usual Place or Places of abode an attested copy of such Summons at least three days before the Day of return and setting of the Court And the said Summonses and other Process and Precepts of said Courts shall be executed by the Provost Marshall or his Deputy.

And be it further Ordained and Ordered that the Form of all Summonses Warrants of Distress and Commitments to be issued by such Commissioners shall be in the Forms following vizt

Form of original Summons.

District of _____ To Wit

A.B. and C. D. Esqr Commissioners for holding a Court for the Summary Trial of small Debts and Demands within the said District.

To the Provost Marshall of the Island of Cape Breton and its Dependencies or to his Deputy or Deputies within the District aforesaid, Greeting

We Command you to Summons E.F. of _____ in the said District (addition) if a resident or to be found in this District to appear before His Majesty's said Court on Monday the ____ Day of _____ at _____ at _____ O'Clock in the _____ noon, then and there to answer the Suit of H.G. touching and concerning a Demand of the said H.G. amounting to the Sum of _____ said to be due at _____ from the said E.F. into District aforesaid on the

_____ day of _____ for (Goods sold and Delivered) (work done and performed) or by Note of Hand or other Paper in writing as the case may be) Therefore fail not and there make due return of this Precept with your doings thereon. Given under our Hands and Seals at _____ in the District aforesaid the _____ Day of _____ in the _____ Year of His Majesty's Reign.

Entered by: I. Clerk A.B.
 C.D.

Form of Warrant of Distress

District of _____ to Wit

A.B. and C.D. Esqr Commissioners for holding a Court for the Summary Trial of small Debts and Demands within the said District

To the Provost Marshall of the Island of Cape Breton and its Dependencies or to his Deputy or Deputies within the District aforesaid.

Whereas F.G. lately in the said court held at _____ on Monday the _____ day of _____ recovered against E.F. of _____ the Sum of _____ Debt or Damages and _____ Costs of Such. These are therefore in His Majesty's Name to command you forth with to Levy or cause to be levied by Distress and Public Sale of the Goods and Chattels of the said E.F. to be to be found within the said District the said Sums amounting together to the Sum of _____ together with your own and _____ more for this Precept giving at least three days previous Public Notice of such Sale and returning the Overplus thereof if any to the said E.F. and make due return of this Precept with your doings thereon into the said Court within eight days from the date hereof or at the first Court day next after.

Given under our Hands and Seals at _____ in the District aforesaid the _____ day of _____ in the _____ year of his Majesty's reign

Entered G: I. Clerk

Form of Warrant of Commitment for want of Distress being found.

District of _____ to wit

A.B. and C.D. Esquires Commissioners for holding a Court for the Summary Trials of small Debts and Demands within the said District.

To the Provost Marshall of the Island of Cape Breton and its Dependencies or to his Deputy or Deputies within the District aforesaid.

Whereas F.G. lately in the said Court held at _____ the _____ day of _____ recovered against E.F. of _____ the Sum of _____ Debt or Damage and _____ Costs of Such And it appears by your return on our Warrant of Distress Dated the _____ Day of _____ that Goods and Chattels of the said E.F. are not to be found within the District whereof to Levy the said Sums with your Fees and _____ for that manner or whereof to Levy more than _____ of the said Sums and these shall remain ratified of the same the Sum of _____ you are therefore hereby in His Majesty's Name Commanded to take the Body of the E.F. and him committ to His Majesty's Goal [Jail] in the District aforesaid there to remain untill the said remaining Sums of _____ with your Fees are fully fixed or untill he shall be therein Discharged by due excuse of Law, Given under our Hands and Seals of _____ in the District aforesaid the _____ day of _____ in the _____ Year of His Majesty's Reign.

Entered by: I. Clerk.

Form of Entry of Judgement

District of _____ To Wit

At a Court for the Summary Trials of Small Debts and Demands held at _____ in the said District on the _____ day of _____.

Present

A.B. }
C.D. } Esquires
Commissioners

Between
and

E.F. }
F.G. } Plaintiff
Defendt

for a Demand of the said E.F. amounting to the Sum of _____ said to be due at _____ from the said E.F. to the said F.G. in the District aforesaid on the _____ day of _____ for &c &c &c

The Defendant having been duely summoned and appearing and the Parties their Pleas Allegations and Evidence being fully heard and understood by the Court It is considered and adjudged that the said _____ do recover against the said _____ the Sum of _____ and his Costs taxed as _____ And that Process thereafter be issued at the request of the said _____.

Entd by: I. Clerk

A.B.
C.D.

And be it further Ordained and Ordered that nothing in this Ordinance shall extend or be construed to extend to empower the said Commissioners to hear try or determine any Matter or thing respecting Freehold or real Estate or any Debt or Contract grounded upon or when any Sealed Instrument may be necessary required in Evidence or any trespasses Suits or Causes Sounding in Damages only or on any amount unsettled under Hand where the whole amount shall exceed the Sum of Five Pounds, although the Ballance demanded may be a less Sum any thing in this Ordinance contained to the Contrary notwithstanding

And be it further Ordained and Ordered that whenever the Summons shall appear to have been duly served and the Defendant or Defendants shall neglect or refuse to appear and answer accordingly without lawfull and reasonable excuse the Court shall proceed to hear the Plaintiff's allegations and Evidence and give Judgement against the Defendant or Defendants by Default causing the same to be duly entered and shall thereupon award executory Process as aforesaid.

And be it further Ordained and Ordered that when it shall appear by the return of the Provost Marshall that any Person or Persons to avoid the executory Process of the Court aforesaid shall shift his residence out of the District wherein the cause shall be instituted and shall not leave therein sufficient Goods and Chattels be found Whereon to make Distress the Party injured on producing and filing in the Office of the Chief Clerk of the Pleas in any of the Supreme Courts of this Island a Copy attested of the Proceedings below with an Affidavit of the Facts shall and may Institute an Action of Debt upon the Judgement below and take out Process and proceed to Judgement in such Supreme Court in like Manner as if the Matter in dispute has Orignally exceeded in value the aforesaid Sum of Five Pounds.