

C A P. II.

AN ACT to REGULATE the TERMS of the Sittings of the INFERIOR COURTS of COMMON PLEAS in this Province, and to ENLARGE the JURISDICTION of the same, and for the SUMMARY TRIALS of CERTAIN ACTIONS.

WHEREAS the enabling the Justices of the several Inferior Courts of Common Pleas in this province to hold *four* terms in the year will tend to the more speedy and easy administration of justice—

Preamble.

I. *Be it therefore enacted, by the Lieutenant Governor, Council and Assembly,* That there shall be *two* additional terms in each year for the sittings of the said Inferior Courts of Common Pleas in the several counties at the times following, to wit: For the county of *Westmorland* on the *third Tuesdays* of *April* and *October*; for the county of *Charlotte* on the *second Tuesdays* of *July* and *December*; for the county of *York* on the *second Tuesdays* in *April* and *October*; for the county of *Sunbury* on the *third Tuesdays* in *April* and *October*; for *Queen's* county on the *fourth Tuesdays* in *April* and *October*; for *King's* county on the *first Tuesdays* in *May* and *November*; at which said terms no Jury shall be summoned to attend.

Two additional terms in each year for the sittings of the inferior Courts of Common Pleas.

AND WHEREAS, doubts have arisen whether the jurisdiction of the said Inferior Courts of Common Pleas extended to any other causes than those in which the parties were Inhabitants of the county and where the promise was made or other cause of action arose immediately within the county in which the suit was brought—AND WHEREAS, it is deemed advisable to extend the jurisdiction of the said Inferior Courts of Common Pleas so as that they may have cognizance of causes where the sum or thing in contest may exceed the value of *fifty pounds*.

Preamble.

II. *Be it further enacted,* That the jurisdiction of the said Courts respectively shall be considered to extend to all transitory actions

The jurisdiction of the said Courts to extend

to all actions arising in any other county—except where the Titles to lands come in question and to have a concurrent jurisdiction with the Supreme Court.

May issue Subpœnas, which shall be of the same validity to compel the appearance of witnesses as if issued from the Court in the county where the witness resides.

The Defendant in any suit commenced in either of the Inferior Courts of Common Pleas, in which the thing in contest exceeds 10*l.* may remove the same into the Supreme Court, before it shall be determined, and either party may bring a Writ of Error after judgment if exceeding 10*l.*

The Defendant may be held to bail on affidavit where the cause of action exceeds three pounds.

Where the Plaintiff resides in any other county—affidavit may be made before any Justice of the Supreme Court, or of the Common Pleas in the county where the Plaintiff resides, or Commissioner for taking affidavits &c.

Preamble.

actions and all other actions arising within any other place or county (except where the title to lands come in question) and shall in those cases, except as aforesaid, have a concurrent jurisdiction with the Supreme Court of this province—And that the said Justices of the Inferior Courts of Common Pleas be and hereby are empowered to issue Subpœnas for any witness or witnesses residing in any of the counties within the said province. And that all Subpœnas so issued from the said Justices of the said Inferior Court of Common Pleas shall be of the same validity to compel the appearance of the witness or witnesses as if such Subpœna or Subpœnas had been issued from the Inferior Court of Common Pleas in the county where the witness or witnesses reside. PROVIDED ALWAYS, That it shall and may be lawful to and for any Defendant or Defendants in any suit to be commenced in either of the said Inferior Courts of Common Pleas, in which the sum or thing in contest exceeds the sum of *ten pounds*, to remove the same suit before it shall be determined into the said Supreme Court by *Habeas Corpus*; and after any suit shall be determined and the amount of the judgment shall exceed the sum of *ten pounds* it shall and may be lawful for either party to bring a Writ of Error upon the said judgment to remove the same into the said Supreme Court.

III. *And be it further enacted*, That in cases where the Plaintiff's cause of action shall amount to upwards of *three pounds* and affidavit thereof made and filed, the Defendant or Defendants in such suit may be held to bail as has been heretofore accustomed.

IV. *And be it further enacted*, That in cases where the Plaintiff or Plaintiffs reside in any other county than that in which the suit is intended to be commenced, the affidavit to hold to bail may be made either before the Chief Justice or other Justice of the Supreme Court, or any Justice of the Common Pleas of the said county in which the same Plaintiff or Plaintiffs reside, or any Commissioner appointed for taking affidavits to be read in the Supreme Court for the same county; and in all cases the affidavit to hold to bail may be made before the officer who issues the process or his deputy.

AND WHEREAS, it has been found by experience that the present mode of practice in the prosecution of suits in the said Inferior Court of Common Pleas and the Mayor's Court of the city of *Saint John* where the sum or thing in contest

test has not exceeded the sum of *ten pounds* has been attended with an expence that does not bear a reasonable proportion to the said sum or thing in contest—

V. *Be it therefore enacted*, That, from and after the passing of this act, the said Courts are hereby respectively empowered in all actions of debt, actions of assumpsit, and actions of trover and conversion brought before them, the sum total whereof shall not exceed *ten pounds*, to proceed in a summary way by the examination of witnesses in open Court or other legal evidence, to try the merits of such causes wherein no dilatory plea shall be admitted, and to determine therein according to law or equity, and make up Judgment accordingly unless such cause shall be put to issue by a Jury in which case such cause shall be continued to the next stated term—PROVIDED ALWAYS, That where the cause shall be determined by the said Court the *first* term, the said Court shall grant a stay of execution for *three months* or until the next term.

VI. *And be it further enacted*, That, in the said causes, the bill of complaint or declaration shall be inserted in the writ, a copy of which shall be served on the Defendant or Defendants who shall at the term to which the writ is returnable or within *twenty days* after put in bail or enter his or their appearance in the said actions, and if he or they intend to defend the same, file the General Issue and give a copy thereof to the said Plaintiff or Plaintiffs Attorney, and the said cause shall be tried and determined by the Court or Jury at the next succeeding term, unless upon application made by either party and sufficient cause shewn by affidavit the Court may think proper to put off the trial on account of the absence of a material witness; and in case the Defendant or Defendants shall not at the term to which the writ is returnable or within *twenty days* after as aforesaid, file the General Issue in the said cause and give to the said Plaintiff or Plaintiffs Attorney a copy thereof, that then judgment may be entered by default in the said causes at the next succeeding term and the Court assess the damages as has been heretofore accustomed.

VII. *And be it further enacted*, That the Presiding Justice in the said Courts respectively shall sign the entry made in the minutes of the said Courts of the judgments so given in every cause determined in a summary way either by the Court or Jury as aforesaid; a copy of which certified by the Clerk under the Seal of the Court shall be evidence of the said judgment in all Courts within this province.

The Courts of Common Pleas and Mayor's Court of Saint John, in all actions not exceeding ten pounds to proceed in a summary way to try the cause,

and make up judgment; unless the cause be put to issue by a jury. Where the cause shall be determined at the first term, the Court to grant a stay of execution.

The declaration to be inserted in the writ, a copy of which to be served on the Defendant, who is to put in bail or enter an appearance, & file the General Issue, the cause to be tried at the next term, unless the Court put off the trial for want of evidence.

If the Defendant do not at the return of the writ or within twenty days thereafter file the General Issue judgment to be entered by default.

The presiding Justice to sign the entry of judgment in the minutes, a copy of which certified under the seal of the Court to be evidence in all Courts in the province.

Justices Fees.

Clerk's Fees.

Attorney's Fees.

VIII. *And be it further enacted*, That the fees attending the prosecution of suits determined in a summary way by the Court as aforesaid, shall be as follows: To the Justices—Upon filing the writ *two shillings*; for trial and judgment and taxing costs *three shilling*; taking bail if at his chambers *two shillings*; To the Clerk for signing and sealing the writ and filing the præcipe *one shilling and six pence*; for filing the affidavit for bail *four pence*; for filing the writ and entering the cause *one shilling and six pence*; for final judgment *two shillings*; for entering the Defendant's appearance and filing plea *one shilling and six-pence*; To the Attorney,—For writ, præcipe, affidavit and declaration *eleven shillings and eight pence*; if no bail required then *ten shillings*; and in all causes that do not go to a Jury for all other proceedings until final judgment *eight shillings and four pence*;—To the Sheriff and Crier the same fees as in other cases in this Court.

The proceedings in suits, already commenced, not to be altered

the Courts to proceed in such causes to final judgment.

IX. PROVIDED ALWAYS, *and be it further enacted*, That the proceedings in any suit already commenced and depending in either of the said Courts of Common Pleas shall not be altered by any thing contained in this act, relative to the trial of causes in a summary way; but that it shall and may be lawful for the said Courts respectively to proceed in the said causes to final judgment and execution as has been heretofore accustomed any thing herein contained to the contrary thereof in any wise notwithstanding.

All writs that may be issued before the 1st of April next, returnable at the Summer terms, made returnable at the additional terms

and all causes continued over at the last terms to be considered as continued over to the additional terms. The Courts to proceed in such causes at the additional terms as they might have done at the Summer terms.

X. *And be it further enacted*, That the several writs and processes already issued or that may be issued before the *first* day of *April* next, out of either of the said Courts of Common Pleas returnable at the next Summer terms of the said Courts respectively, shall be, and the same are hereby deemed and considered as returnable at the additional term of the said several Courts which intervenes between this time and the said Summer terms, and that all causes which stand continued over at the last terms of each of the said Courts, shall be, and the same are hereby considered as continued over to the said additional terms of each of the said Courts which next happens, and it shall be lawful for the said Courts respectively, to proceed in the said causes at the said next additional term, in the same manner as it might have been lawful for the said Justices to have proceeded in the same at the next summer terms of the said Courts, had this act not been made any thing herein contained to the contrary thereof in any wise notwithstanding.