

mon Pleas, shall be holden on the SECOND Tuesdays in *March* and *September*, in each year, any Law or usage to the contrary notwithstanding.

II. *And be it further enacted*, That no Procefs shall abate or be discontinued by reason of the alteration of the said Terms, but shall and may be proceeded upon, heard and determined at the times herein appointed, in the same manner as they might have been proceeded upon had no alteration been made. No Procefs to abate or be discontinued by reason of the alteration.

III. *And be it further enacted*, That the several and respective Town and Parish officers, shall annually be appointed on the SECOND Tuesday in *December*, any Law or usage to the contrary notwithstanding. Parish officers to be appointed in December.

C A P. IV.

An ACT to render Persons convicted of PETTY LARCENY, competent Witnesses. Passed the 5th of March, 1802.

WHEREAS Persons convicted of Grand Larceny are by their Punishment restored to their Credit as Witnesses, but Persons convicted of Petty Larceny, are rendered and remain wholly incompetent to be examined as Witnesses—

Be it therefore enacted, by the LIEUTENANT-GOVERNOR, Council and Assembly, That from and after the passing of this Act, no person shall be an incompetent Witness by reason of a conviction for Petty Larceny.

C A P. V.

An ACT for the easy and speedy Recovery of Small Debts, and for regulating the proceedings thereon. Passed the 5th of March, 1802.

BE it enacted, by the LIEUTENANT-GOVERNOR, Council and Assembly, That all actions wherein the Sum or matter in demand shall not exceed *Five pounds*, shall be heard and determined before any one of His Majesty's Justices of the Peace in the respective Counties of this Province, and no other Court shall hold Plea or Jurisdiction of the same, and that the ordinary Procefs shall be by Summons under the hand and seal of such Justice directed to the Constable of the Town or Parish where the Defendant shall reside, which Procefs shall express the time and place of appearance and cause of action, and shall be served at least Six days before the time of Trial, and such service shall be by reading the same in the Defendant's hearing, or by leaving a true and attested Copy thereof at the Defendant's usual place of abode. Actions for sums not exceeding 5^l. to be heard and determined before one Justice of the Peace Ordinary Procefs to be by Summons directed to the Constable of the Parish where Defendant resides. Shall be served six days before trial.

Constable to make return to the Justice, who shall proceed to Trial, unless Defendant shall demand a Jury, in which case the Justice shall issue a Venire.

In case of legal challenge other Jurors to be summoned & sworn, &c.

Verdict to be conclusive &c.

Witnesses to be sworn.

Defendant allowed set off.

If the Plaintiff is found indebted, Judgment to be for the Defendant, not exceeding £ 5.

No person to plead or counsel, &c. in any cause to which he is not a party—unless he first make Oath that he hath not received and will not receive any Fee or reward therefor.

Jurors and Witnesses refusing to appear or serve to forfeit a Sum not exceeding 10s.

On Affidavit that a Debtor is about to abscond—Justice may issue a Capias and order Bail.

II. *And be it further enacted,* That every Constable shall indorse on such Process a true return of the service thereof, and make return of the Summons to the Justice who issued the same; and upon such return the Justice shall proceed to hear the parties and their proofs and evidences, and give such Judgment thereon as to him shall appear just and equitable, unless the Defendant two days before such Trial shall give notice to such Justice that he shall put such cause to issue by a Jury, in which case the Justice shall issue a Venire to a Constable, commanding him to Summon three good and lawful Freeholders, who shall be in no wise of kin to either of the parties to make a Jury for the trial of the Action, and if any legal challenge be made to any or either of them for such Trial, the Constable shall Summon another or others in his or their stead, which Jury shall be sworn to try the issue and give their Verdict, and the Verdict so given shall be conclusive, and Judgment rendered thereon as in a Trial before a Court of Record, and the Witnesses shall in like manner be sworn to give their Evidence in the usual manner; and upon every Trial the Defendants shall be allowed to set off any account or demand they may have against the Debt or demand of the Plaintiff, and if upon any Trial it shall be found that the Plaintiff is indebted to the Defendant, judgment shall be rendered in favour of the Defendant for the Sum found due and Execution issued thereon, provided the same shall not exceed *Five pounds*.

III. *And be it further enacted,* That no person whatsoever shall be permitted by any Justice to prosecute, defend, plead or counsel in any Suit or Action to be tried by virtue of this Act, to which such person is not a party, unless such person so offering or appearing to prosecute, defend, plead or give Counsel as aforesaid, shall previously swear before such Justice that he has not received or taken any Fee or reward for the same, either directly or indirectly, nor any other person to or for his use, and that he will not, directly or indirectly, receive or take any Fee or reward for the same, either by himself or by any other person to or for his use.

IV. *And be it further enacted,* That every person impannelled as a Juror or subpoenaed as a Witness, who shall not appear, or appearing shall refuse to serve, or to give Evidence in any such action, shall forfeit and pay for every such default or refusal (unless some reasonable cause be proved on Oath to the satisfaction of the said Court) such Fine or Fines, not exceeding the Sum of *Ten shillings*, as the said Court shall think reasonable to impose.

V. *And be it further enacted,* That whenever it shall appear to any Justice upon Affidavit that any Debtor in a Sum not exceeding *Five pounds*, shall be about to abscond, or that the Creditor is in danger of losing his Debt, such Justice shall issue a Capias against the Body of such Debtor, and order the Constable

Constable to take Bail for the Sum sworn to; and it shall be the duty of the Constable to take the Body of such Defendant if found in his Parish, and take security for such Debtor's appearance at the time and place specified in the Writ; and in case the Debtor shall refuse to give such security, it shall be lawful for the Constable by Mittimus signed by any Justice of the Peace, to commit such Debtor to the Gaol of the County, and the Keeper of such Gaol shall retain such Debtor in custody till discharged by order of Law.

Constable to take the Body of the Defendant & Bail for his appearance.

Debtor refusing Bail to be committed to Prison.

VI. *And be it further enacted,* That every Justice of the Peace holding a Court for the trial of causes by virtue of this Act, shall keep a book in which he shall fairly enter all causes, whether tried before himself or with a Jury; and all Judgments entered on default of the Defendant's appearance, in which case he shall assess the Damages or Debt as shall appear to him just; and whenever it shall appear to him that Justice cannot be done for want of some material Witness, such Justice may in his discretion upon Affidavit adjourn the hearing of the cause until such Witness may be had, if the party has used all proper diligence to procure the same (not exceeding three Months) and if the application for such adjournment be on the part of the Defendant, such Justice at his discretion may grant it upon such Defendant putting in good Bail to abide final Judgment; and no Justice shall in any case admit the Oath of either party or any Affidavit taken ex parte, unless both parties agree to admit such Evidence.

Justice to enter in a Book all causes tried before him—and all Judgments entered on default, and in case of default to assess damages.

Justice may on Affidavit adjourn the hearing of the cause for want of a material witness, not exceeding 3 Months.

Oath of Parties or ex parte Affidavit not to be admitted but by consent.

VII. *And be it further enacted,* That whenever upon action of Trespass the Defendant shall justify on plea of Title, the Defendant shall commit such plea of Justification to writing, and the same shall be signed and the Justice shall countersign the same, and deliver the plea to the Plaintiff, and the Plaintiff may commence an Action for such Trespass in any Court having cognizance thereof: And if upon such Trial the Plaintiff recover Damages against the Defendant, such Defendant or Defendants shall be liable to pay the Plaintiff double Costs; and such plea before the Justice signed as aforesaid, shall be conclusive Evidence that the Defendants relied on their Title to justify such Trespass; and every Justice to whom such plea shall be tendered, before receiving the same shall require from the Defendants a recognizance with one sufficient surety in the sum of *Twenty pounds*, conditioned that if the Plaintiff shall commence an Action before the next Court having cognizance thereof, for recovery of Damages for such Trespass, such Defendants shall appear and put in special Bail in such Court within Twenty days after the first day of the then next Term of said Court; and whenever such plea shall be tendered and the Defendants shall not forthwith enter such recognizance, the Justice shall proceed in the same manner as if such plea had not been tendered.

Defendant justifying shall commit such plea to writing, which shall be countersigned by the Justice and delivered to the Plaintiff, who may commence his action in any Court having cognizance; and if the Plaintiff recovers the Defendant shall pay double costs.

Plea to be conclusive Evidence that Defendant relied on Title to justify. Justice to require from Defendant a recognizance to appear and put in special Bail, &c. for default of which Justice to proceed.

VIII. *And be it further enacted,* That no Judgment rendered

No Judgment to be reversed for circumstantial Error, or Writ of Error or Certiorari granted,

unless the party applying shall within thirty days make Affidavit that there is just cause for removing such Judgment.

Affidavit to be left with the Justice granting the Writ; Certiorari granted otherwise to be void.

No Execution to be stayed if the party shall give security to restore debt and costs in case of reversal.

Party prevailing to have costs.

ded by virtue of this Act, shall be reversed or set aside for any circumstantial Error where substantial Justice has been done, nor shall any Writ of Error or false Judgment be allowed; nor shall any Certiorari be granted by any Justice of the Supreme Court to remove any Judgment or proceeding by virtue of this Act, unless the party applying for the same shall within Thirty days after such Judgment make Affidavit before some Justice of the Supreme Court or Commissioner for taking Affidavits in that Court, by which Affidavit it shall clearly appear that there is just cause for granting a Certiorari to remove such Judgment either for Error therein or for some unfair practice of the Justice who tried the cause, which Affidavit shall be left with such Justice, allowing such Writ that the adverse party may obtain a copy thereof; and any Certiorari granted otherwise shall be void and of no effect; and no Execution upon any Judgment shall be stayed by any Certiorari, if the party in whose favor such Judgment shall be rendered shall give sufficient security to restore the Debt or Judgment with Costs in case such Judgment shall be reversed; and if any Judgment given under this Act be removed into the Supreme Court and be there affirmed, the party in whose favor such Judgment shall be rendered shall recover his Costs; and if such Judgment be reversed, the party procuring such Certiorari shall recover their Costs.

Executions to be directed to Constables of Parishes where Defendants reside. For want of goods Debtor to be committed to Gaol.

Execution returnable within 30 days. Constables for neglect liable to an action.

No Execution to issue where Title to Lands shall come in question, or actions of Assault and Battery or Slander.

IX. *And be it further enacted,* That all Executions to be issued by the Justices respectively, shall be directed to the Constable of the Town or Parish where the Defendant resides, commanding him to levy of the Goods and Chattels of the Debtor the amount of the Judgment, and for want of such Goods and to satisfy his Fees to commit such Debtor to the Gaol of such County, there to remain until discharged by due order of Law, which Execution shall be returnable within Thirty days, and if any Constable shall neglect or refuse to serve such Execution or to pay the Money when collected to the Creditor, such Constable shall be liable to an action to be brought by the Creditor in any Court proper to try the same, provided that no Execution shall be issued by any Justice in an action where the title to Lands shall come in question, or to any action of Assault and Battery or of Slander.

Clerk's Court in St. John to hold plea of causes cognizable before a Justice of the Peace.

X. *And be it further enacted,* That the Clerk's Court in the City of *Saint John*, shall be authorized and enabled to hold Plea and take cognizance of all causes made cognizable before any Justice of the Peace by virtue of this Act, not exceeding the sum of *Five pounds*; and that nothing in this Act shall be construed to extend to the City of *Saint John*, this Section only excepted.

Costs.

Justices Fees.

XI. *And be it further enacted,* That no greater or other Costs shall be allowed or taxed in Actions brought by virtue of this Act than the following, to wit, Justices Fees—a Summons, *Six pence*—Capias and Affidavit, *One shilling*—Trial and

and Judgment, *One shilling*—Subpœna, *Four pence*—Venire, *One shilling*—Execution, *Nine pence*—Every Witness subpœnaed and sworn, *One shilling*—Constable or other proper officer for serving a Capias or Summons, or serving an Execution, Mileage, for one Mile or under, *One shilling*; for every Mile more, *Three pence*—the Travel to be computed from the place of the Defendant's abode, or where he shall be found, to the place where the Writ is returnable;—Serving every Execution, for every Pound, *Six pence*;—Summoning a Jury, *One shilling*; Subpœna, *Six pence* for less than one Mile, and *Three pence* for every other Mile.

Constables Fees.

XII. *And be it further enacted*, That this Act shall continue and be in force for *Three years*, and no longer.

Limitation.

C A P. VI.

AN ACT for AIDING and ENCOURAGING PARISH SCHOOLS. Passed the 5th of MARCH, 1802.

WHEREAS the Education of Children is of the utmost importance to their future usefulness in Society;—
AND WHEREAS the situation of many Parents in the different Parishes of this Province render them unable to procure for their Children the benefit of instruction in Reading and Writing, without the aid of the Legislature.

Preamble.

I. *Be it therefore enacted, by the* LIEUTENANT-GOVERNOR, Council and Assembly, That the Sum of *Four hundred and twenty pounds* (being *Ten pounds* to each Parish) be granted to the Justices of the General Sessions of the Peace in the different Counties in this Province, to be paid by Warrant of His Excellency the LIEUTENANT-GOVERNOR, out of the public Treasury, in Trust for the purpose of encouraging or assisting in the establishment of Schools in the different Parishes of their respective Counties.

Ten pounds to each Parish, granted to the Justices in their General Sessions.

In Trust for encouraging the establishment of Schools.

II. *And be it further enacted*, That the Sum of *Ten pounds* to each Parish hereby granted in Trust to the said Justices of the General Sessions of the Peace in each County, shall be by them in their discretion apportioned and allotted to each Parish in such manner as shall best assist in maintaining such Schools as may be already established, or as shall induce the establishment of other Schools where they may judge the same necessary.

Justices to apportion the Money to each Parish.

III. *And be it further enacted*, That the said Justices shall make report to the LIEUTENANT-GOVERNOR, Council and Assembly, at the next meeting of the General Assembly, how the Monies granted have been laid out, and how far the purposes hereby contemplated have been answered.

And report to the Legislature.