

What shall be deemed a writing under the Act 5 W. 4, c. 35.

Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That every instrument partly printed and partly written, or wholly printed, with a written signature thereto, and every signature of an individual, or a firm, or a corporate body, or of any officer of such body, to any instrument, and every writing purporting to be such signature, shall be deemed and taken to be a writing within the meaning of the provisions of the said Act.

CAP. XI.

An Act in addition to and explanatory of an Act, intituled *An Act to regulate proceedings before Justices of the Peace in Civil Suits.*

Passed 9th March 1838.

Preamble.
4 W. 4, c. 45.

WHEREAS in and by the third section of an Act made and passed in the fourth year of the reign of His late Majesty King William the Fourth, intituled "An Act to regulate proceedings before Justices of the Peace in Civil Suits," it is among other things enacted, that "a Justice shall upon application issue a *capias*, when it is made to appear on affidavit, to be taken in writing of the plaintiff or his agent, that the cause of action does not exceed five pounds, that the defendant is justly and truly indebted to the plaintiff in a sum to be specified in the affidavit which shall not be less than twenty shillings, after giving full credit to the best of deponent's knowledge or belief for all payments and offsets:" And whereas it is expedient that Justices of the Peace should be authorized and empowered to issue *capiases* when the sum sworn to shall amount to ten shillings;

Capias may be issued when sum sworn to shall amount to ten shillings.

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That from and after the passing of this Act, it shall and may be lawful for a Justice of the Peace, when proceeding under the authority and according to the provisions of the hereinbefore recited Act, upon application and affidavit, as therein directed, to issue a *capias* when the sum sworn to shall amount to ten shillings, any thing in the said Act contained to the contrary thereof in any wise notwithstanding.

Debtors having the benefit of the Gaol Limits under the Act 6 W. 4, c. 41, not to be entitled to a discharge.

II. 'And whereas doubts have arisen whether defendants arrested by virtue of executions issued under the provisions of the said Act, and not in close custody, but only confined within the limits of the Gaol under the authority of an Act of the General Assembly of this Province, intituled "An Act relating to insolvent confined debtors," are entitled to their discharge after a certain number of days imprisonment, in like manner as is provided by the third section of the said first recited Act, for persons actually committed in close custody;' Be it therefore further enacted and declared, That nothing in the said first mentioned Act contained, with respect to the discharge of a debtor after a certain number of days imprisonment, shall extend or be construed to extend to persons having the benefit of the Gaol Limits.

Execution may be issued by a Justice other than the Justice before whom the trial may have been had.

III. And be it further enacted, That whenever a cause shall have been heard and determined before any Justice of the Peace; and judgment given and entered under the authority of the said first mentioned Act, in case of the absence, sickness or death of such Justice, it shall and may be lawful for any other Justice of the Peace resident in the County or Parish in which said judgment may have been given and entered as aforesaid, at any time within three calendar months after the giving of such judgment, on view of the original entry of such judgment, and on affidavit made before him that the amount of the said judgment or some part thereof remains

remains unsatisfied, to issue execution upon the same in like manner and subject to the same provisions, restrictions and limitations as if the cause had been heard and determined and judgment given by such last mentioned Justice of the Peace.

IV. And be it further enacted, That in any case where a Judge of the Supreme Court may on review award costs to either party in pursuance of the said first recited Act, it shall and may be lawful for such party to sue out of the Supreme Court a Writ of attachment according to the form in the Schedule hereunto annexed or to that effect; which Writ the Clerk of the said Court shall issue upon the fiat or order of a Judge; Provided always, that no fiat or order for such Writ shall be made by any Judge of the Supreme Court until it be made to appear to his satisfaction by affidavit that such costs have been duly demanded by the party to whom the same have been awarded, or by some person duly authorized by him to demand and receive the same, or by the Attorney of such party in the proceedings of review, and that such costs have not been paid: and the party who may issue such attachment shall be entitled to demand, receive and levy the sum of ten shillings from the party against whom the attachment may issue as the costs of such attachment and of the proceedings hereinbefore directed for obtaining the same.

A Writ of attachment may be sued out of the Supreme Court for costs awarded on review.

V. And be it further enacted, That the Sheriff or other officer by whom any such Writ of attachment shall be executed shall be entitled to, and he is hereby authorized and empowered to demand and receive from the party against whom such attachment shall issue, the like poundage and fees as in cases of execution; and that any party arrested on any such attachment shall on payment to the said Sheriff or other officer of the costs specified in such attachment, together with the costs of the attachment and the Sheriff's poundage and fees as aforesaid, be discharged from custody and arrest under such attachment; and the Sheriff or other officer shall make due return of such Writ, and pay over the money received under the same to the party at whose suit or instance the said Writ may have issued or his Attorney.

Fees of officer executing the writ of attachment.

VI. And be it further enacted, That any person in custody upon a Writ of attachment issued pursuant to this Act, or the said Act of which this is an amendment, shall be entitled to the benefit of any Act or Acts of Assembly for the relief of confined debtors, in the same manner as if such person were arrested on mesne process or execution in any civil suit.

Return.

Persons arrested upon a writ of attachment to be entitled to the benefit of Acts for relief of confined debtors.

VII. And whereas by the provisions of the said first recited Act process and execution may be served by a Constable of the Parish only within which the party to be served may reside or be found: And whereas it would be more convenient if any Constable of the County were authorized to serve any such process or execution; Be it therefore enacted, That all process and execution which may be issued under the provisions of the said first recited Act may be directed in general terms to and served by any Constable of the County within which the party to be served may reside.

Process and execution may be directed to and served by any Constable of the County wherein the party to be served may reside.

VIII. And be it further enacted, That the provisions of this Act, so far as the same are applicable, shall extend to the City Court of the City of Saint John, and to persons in custody under process issuing therefrom.

Acts extended to the City Court of Saint John.

SCHEDULE.

WRIT OF ATTACHMENT.

Victoria by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, &c. To our Sheriff of _____, Greeting, We command you that you attach E. F. so that you may have his body before us at Fredericton on [a return day in the ensuing term] to answer to us for a certain trespass and contempt

Writ of attachment.

contempt in not paying to C. D. the sum of for costs awarded to the said C. D. by Esquire, Chief Justice [or one of the Justices of our Supreme Court *as the case may be,*] in a certain matter of review lately pending before the said Chief Justice [or Justice,] pursuant to the Acts of Assembly in such case made and provided, and have then there this writ. Witness &c.

[*To be tested in the name of the Chief Justice on the day whether in term or vacation on which the fiat or order for such writ may bear date.*]

By order of the Chief Justice [or Mr. Justice *as the case may be.*]

SHORE.

In case the Sheriff be a party, the writ to be directed to the Coroner as in other cases.

CAP. XII.

An Act in addition to the Acts regulating the sale of Real Estate seized and taken in execution.

Passed 9th March 1838.

Preamble.

‘**W**HEREAS the time and place of sale of real estate seized in execution by the Sheriff of any County, are required to be advertised at least six months before such sale can be duly made: And whereas it may sometimes happen that the Sheriff by whom a seizure of real estate may have been made may go out of or be removed from office, or die before the completion of the sale thereof, and doubts have arisen whether such sale can be completed and a proper conveyance executed by the person succeeding to the said office;’

Successor to a Sheriff who may have taken any real estate in execution may make sale and conveyance.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That whenever hereafter it shall happen that the Sheriff who may have seized and taken any real estate in execution shall go out of or be removed from his office, or shall die before the completion of such execution by the sale of the said real estate, that then and in such case the person succeeding to the said office shall proceed to make the sale and conveyance of such real estate in the same manner as if he had seized and advertised the same, without any new writ to him directed for that purpose, and that the notices of the time and place of such sale duly made by his predecessor in office shall be as good and effectual as if no change in the office had taken place.

Distribution of fees.

II. And be it further enacted, That the Sheriff's poundage, payable on any sale of real estate made in conformity to this Act shall be equally divided between the Sheriff by whom the sale and execution shall have been completed and the Sheriff who may have made the seizure, his Executors or Administrators, and the other execution fees, shall be paid to the officer by whom the duty on which the same are respectively chargeable may have been performed.

CAP. XIII.

An Act for the further amendment of the Law.

Passed 9th March 1838.

‘**W**HEREAS it is expedient to amend the provisions of the tenth section of an Act passed in the fifth year of the reign of King William the Fourth, intituled “An Act to provide for the more convenient administration of Justice in the Supreme Court,” in the following manner;’ Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That in any case in which

In cases of references.