

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1795. Fredericton: Christopher Sower, Printer to the King's Most Excellent Majesty, 1795.

35 George III – Chapter 1

An Act for the more Easy and Speedy Recovery of Small Debts.

I. Be it enacted, by the act Governor, Council, and Assembly, that from and after the passing of this act, all actions of debt, detinue, account, covenant, trespass, and trespass on the case, wherein the sum due, or thing demanded shall not exceed the value of three pounds, shall be and hereby are made cognizable before any Justice of the Peace of any county in this province; and every such Justice shall be and hereby is respectively authorised and impowered to hear, try and determine all such causes and actions according to law and equity; and shall and may hold a Court for the tryal thereof, and is hereby vested with all such power and authority for the purpose aforesaid as is usual in Courts of Record in this province, and shall sign all process to be issued out of such Court; and further that every such Justice of the Peace, upon application to him made for the recovery of any such debt, damages or demands, shall issue a Summons or Warrant as the case may require, directed to the Constable or other proper officer of the town or parish where the Defendant dwells or can be found, commanding him, when a Summons is issued, to summon the Defendant to appear before such Justice at a certain time and place in the same Summons to be expressed, not less than ten days from the time of issuing such Summons, to answer the Plaintiff of the plea in the same Summons to be mentioned ; and when a Warrant is issued then commanding the Constable or other officer to take the Defendant and bring him or her forthwith before such Justice to answer the Plaintiff of the plea in the same Warrant to be mentioned; and upon the return of such Summons if the same be duly served, or upon bringing the Defendant before such Justice by virtue of any such Warrant, the same Justice shall proceed to hear and determine the allegations and proofs of the parties, Plaintiff and Defendant, and within four days thereafter give judgment thereon in such manner as shall appear to him to be agreeable to law and equity, together with costs of suit as hereafter allowed.

II. And be it further enacted, That the first process against all Freeholders and Inhabitants having families (except as hereafter is excepted) shall be by Summons, which shall be served at least ten days before the time of appearance mentioned therein, by reading the same Summons to the Defendant and delivering to him or her a copy thereof when required, if he or she shall be found, and if not by leaving a copy thereof at his or her house or place of abode, in the presence of some one of the family of suitable age and discretion, who shall be informed of the contents thereof; and the Constable or officer serving such Summons, shall upon the oath of his office, indorse thereupon the time and manner he executed the same, and sign his name thereto. And in case the Defendant does not appear at the time and place appointed in such Summons, and it shall appear, by the return indorsed thereon, that the Summons was duly served upon the person of the Defendant in the manner aforesaid, and no sufficient reason shall appear to the Justice why the Defendant does not appear at the time appointed, then the said Justice who issued the said Summons shall proceed to hear, try and determine the cause in the same manner as if the Defendant had appeared; but if such Summons was served only by leaving a copy thereof at the

house or place of abode of the Defendant as aforesaid, and the Defendant does not appear at the time and place appointed in such Summons, and no sufficient reason shall appear to the Justice why the Defendant does not appear, then the said Justice shall issue a warrant against such Defendant in the manner aforesaid, and proceed as above directed, unless the Plaintiff shall elect to have a new Summons against such Defendant. And in all cases where sufficient reason shall appear to the Justice why the Defendant does not appear at the time and place appointed in the Summons, the Justice shall give the Defendant such further time as he shall think reasonable, and at such time as so given, the Justice shall and may proceed as aforesaid.

III. Provided always, and be it further enacted, That in all cases where a Warrant shall be issued by virtue of this act, and upon service thereof the Justice who issued the same shall be absent or unable to hear and try the cause, it shall and may be lawful for the Constable or other officer serving such Warrant, to carry the Defendant before the next Justice of the county where the Justice who issued the Warrant shall reside, and such other Justice shall take cognizance of, and hear, try and determine the cause in the same manner as he could or might have done, if he had issued the Warrant by virtue of which the Defendant shall be taken; but in all other cases where any process shall be issued in pursuant of this act and served on the Defendant for any debt or demand of what nature soever, the cause shall be tried before the Justice who first issued such process and not before any other justice; and the Defendant if he or she has any account or demand against the Plaintiff in such action shall and may plead and set off the same against the debt or demand of the Plaintiff.

IV. And be it further enacted, That if any Plaintiff or his or her Attorney so applying for process shall prove upon oath, to the satisfaction of the Justice, that if such process be by Summons against any such Freeholder or Inhabitant having a family, the Plaintiff will be in danger of losing his debt or demand thereby, then the Justice shall issue a Warrant in such manner as is above directed.

V. And be it further enacted, That where the parties shall agree to enter an action before any Justice, without any process, the Justice shall proceed to trial in the same manner as if a Summons or Warrant had issued.

VI. And be it further enacted, That, in all cases where a Warrant shall be issued, if the Plaintiff or Defendant shall require a longer time than is first appointed by the Court to try the said cause, and will, if required, give sufficient security to appear and stand trial on such other day as shall be appointed, then the Justice is hereby empowered, upon sufficient cause shewn on affidavit, to adjourn the trial of such cause to any day he may judge most convenient. Provided always, That where the Plaintiff, in any cause or action to be brought by virtue of this act, shall be a Non-resident of the county, and shall give security to pay such sum as shall be awarded in case judgment shall be given against him, that then he may have a Warrant returnable immediately. And if any adjournment be made without the consent of the Plaintiff, then the Defendant shall give sufficient security for his or her personal appearance on the day to which such adjournment shall be made, and in default of such appearance to pay the debt and costs if judgment shall be

given, against him or her; and in default of giving such security the Justice shall proceed to trial without an adjournment.

VII. And be it further enacted, That in every action that shall hereafter be brought by virtue of this act, it shall and may be lawful for either of the parties to the suit, or the Attorney of either of them, after issue joined (and before the Court shall proceed to enquire into the merits of the cause) to demand of the said Court that such action be tried by a Jury; and upon such demand the said Justice holding such Court is hereby required to issue a Venire directed to any Constable or other proper officer of the town or parish where the said cause is to be tried, commanding him to summon three good and lawful men being Freeholders of such town or parish where the said cause is to be tried, and who shall be in no wise of kin to the Plaintiff or Defendant nor interested in such suit, to be and appear before such Justice issuing such Venire, at such time and place as shall be expressed in such Venire to make a Jury for trial of the action between the parties mentioned in the said Venire; which Constable or officer shall, at the return of the said Venire, return a panel of the names of the Jurors he shall so summon by virtue thereof, and the said persons appearing, and approved by the Court, as indifferent, shall be the Jury who shall try the cause—Provided always, That where any of the persons returned in said panel do not appear, or appearing are not approved of as indifferent by the Court, that in such case the said Constable or other proper officer shall be directed by the said justice holding such Court immediately to summon and make a return of the name or names of some other person or persons duly qualified as aforesaid, who appearing and being approved of as aforesaid, shall, together with the persons first summoned, appearing and approved as aforesaid, be the Jury to try the cause, to each of whom the said Justice Avail administer the following oath, viz. "You do swear that You will well and truly try the matter in difference between _____ Plaintiff and _____ Defendant, and a true verdict will give according to the evidence. So help you God."—And after the said Jury have taken the oath aforesaid they shall fit together and hear the several proofs and allegations of the parties, which shall be delivered in public in their presence; and to each of the witnesses on the said trial the said Justice shall administer the following oath, viz. "You do swear that the evidence You shall give in this matter in difference between _____ Plaintiff and _____ Defendant shall be the truth, the whole truth and nothing but the truth. So help You GOD."—And after hearing the proofs and allegations the Jury shall be kept together in some convenient place until they all agree upon a verdict; and for which purpose a Constable shall be sworn, and to whom the said Justice shall administer the following oath, viz. "You do swear that You will, to the utmost of Your ability, keep every person sworn on this Inquest together in some private and convenient place without meat or drink, You will, not suffer any person to speak to them, or speak to them yourself unless by order of the Justice, unless it be to ask them whether they have agreed on their verdict, until they have agreed on their verdict. So help You God."—And when the Jurors have agreed on their verdict they shall deliver the same to the Justice, in the same Court, who is hereby required to give judgment thereupon, and to award execution in the manner herein after directed.—Provided always, That no oath of either party, or ex-parte affidavit of any other person shall be allowed or given in evidence in any such action unless the parties agree to allow of such evidence.

VIII. And be it further enacted, That every person impanelled 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 or ten shillings, as the said Court shall think reasonable to impose; and the said Court is hereby authorised and required to issue a Warrant, to any Constable or other proper officer, to levy the same on the goods and chattels of the offender, and for want thereof, to take and convey him or her to the Gaol of the county wherein the offence shall have been committed, there to remain until he or she pay such fine, together with the costs attending the same; and the Keeper of such Gaol is hereby commanded to keep such offender in safe custody in such Gaol until such fine together with the costs shall be paid— Provided always, That no such fine or fines shall be imposed unless oath shall first have been made before the Court, by some credible person, that such Juror or Witness, so in default, hath been lawfully summoned or subpoenaed as aforesaid: All and every of which said fines, when recovered, shall be delivered by the said Court to the Overseers of the Poor of the town or parish where the same shall be levied.

IX. And be it further enacted, That in case any Constable or other proper officer, to whom any execution shall be delivered, shall not, within thirty days after receiving such execution, levy the same on the goods and chattels of the person against whom such execution shall be granted, and in ten days thereafter pay the debt and costs so levied into the hands of the Justice who issued the same, or in case of his death or removal from office, to the person in whose favor the execution was granted; or if no goods nor chattels can be found whereon to levy, then if the said Constable or other officer shall not take the body of the person against whom such execution was granted, if to be found, within thirty days from the receipt of such execution aforesaid, then, and in every such case, the said Constable or other officer shall beholden to pay the amount of such execution, to be recovered by an action of debt with costs by the person in whose favor such execution was granted in which case execution shall issue forthwith—Provided always, That neither this act nor any thing herein contained shall be deemed or construed to extend to any action wherein the title of any lands shall in any wise come in question, or to any action of assault and battery, or of slander.

X. And be it further enacted, That when in any action of trespass to be brought by virtue of this act, the Defendant or Defendants shall justify on a plea of title, the Defendant or Defendants shall commit such plea of justification to writing, and having signed the same in the presence of such Justice, shall deliver such plea to the Justice, who shall then counter sign the same and deliver it to the Plaintiff; and that it shall and may be lawful to and for such Plaintiff or Plaintiffs to commence and prosecute an action for such trespass against any such Defendant or Defendants in any Court having cognizance of the same; and if such Plaintiff or Plaintiffs shall recover any damages in such action, the Defendant or Defendants shall be liable to pay to such Plaintiff or Plaintiffs double costs; and on every such trial to be had for such trespass, the plea signed by such Defendant or Defendants shall be conclusive evidence that the Defendant or Defendants relied on his, her or their title to justify such trespass; and that every Justice to whom a plea of justification shall be tendered, shall, before he shall receive such plea, exact from the Defendant or Defendants, together with one sufficient surety, a Recognizance in the sum of twenty pounds, conditioned that

if such Plaintiff or Plaintiffs shall commence a suit, before the next Court having cognizance thereof, for the recovery of such damages for such trespass, such Defendant or Defendants shall appear and put in Special Bail in such Court within twenty days after the first day of the then next term of the said Court; and that in every case, in which such plea shall be tendered and the Defendant or Defendants shall not forthwith enter such Recognizance, the Justice shall proceed in the same manner, as if such plea had not been tendered.

XI. And be it further enacted, That where, in any town or parish, no Constable or other proper officer shall be chosen or appointed, or the Constable or other proper officer be absent, or where a process shall be issued against such Constable or other proper officer of any town or parish, that, then and in such cases, the Justice, upon application made, shall and may direct the process or execution to the Constable or other proper officer of the next adjoining town or parish living nearest where the Defendant dwells or can be found who is hereby required to execute the same.

XII. And be it further enacted, That when any process shall be issued by any Justice, by virtue of this act, the Constable of the town or parish to whom such process shall be directed, shall proceed agreeable to this act and execute such process, in his own proper person, unless the Justice who issued such process shall (at the request of the Plaintiff) judge it expedient to depute some other proper person who will voluntarily undertake to execute the same without fee or reward; but no person shall be so deputed to impanel, or summon a Jury.

XIII. And be it further enacted, That no greater or other costs shall be allowed, taxed, or taken in actions brought by virtue this act then the following: Justice's fees,—A summons four pence; Warrant and Affidavit nine pence; Judgment nine pence; Subpoena for each witness four pence; Venire Facias to summon a Jury nine pence; Execution six pence; every subpoenaed witness attending and sworn one shilling; Constable or other proper officer for serving a Warrant or Summons, notifying the Plaintiff to trial, or serving an execution, mileage for one mile or under one shilling, for every mile more three pence— Provided, That on all precepts, to be issued by virtue of this act, the fees for serving be computed only from the place of abode of the Defendant, or where he shall be found, to the place where the precept is returnable; serving every Execution for every pound six pence; summoning every Jury one shilling; Juror's fees—For all causes tried one shilling per man; when summoned and attending and not trying the cause six pence per man; to the Constable or other person serving a Subpoena six pence for a mile or less, and three pence for every other mile for each witness.

XIV. And be it further enacted, That no judgment, order or proceeding whatsoever to be had or made by virtue of this act, shall be removed by any Writ of Error or False Judgment; and further that no Justice of the Supreme Court shall grant or allow any Certiorari or other process to remove any Judgment order, or proceeding whatsoever, to be had by virtue of this act unless the party, applying for such Certiorari, shall within thirty days after such judgment given, make affidavit satisfying such Justice of the Supreme Court that there is reasonable cause for granting such Certiorari to remove such judgment, either for error therein or for some unfair practice of the Justice who shall have tried the cause, which shall be particularly specified in the said affidavit, and which affidavit may be made before one of the Justices of the Supreme Court, or before one of

the Commissioners for taking affidavits to be read in the Supreme Court, and such affidavit shall be left with the Justice of the Supreme Court who may allow such Certiorari, in order that the adverse party may obtain a copy thereof: And if any Certiorari or other Writ shall be granted or issued otherwise than is above mentioned the same shall be void and of none effect. And further that no execution upon any judgment to be given by virtue of this act shall be prevented or stayed, by any Certiorari or other writ, in case the party in whose favor such judgment shall be given shall give such security as may be satisfactory to the Justice by whom such Judgment shall be given, be given to restore the debt or damages, for which such judgment shall be obtained with the interest and costs, in case such judgment shall be reversed; and if any judgment to be given by virtue of this act shall be removed into the Supreme Court, by Certiorari or otherwise, and be there confirmed, then the party procuring such Certiorari shall pay to the adverse party all costs of defending such suit in the Supreme Court to be taxed, and the party intitled to such costs shall and may have execution for the same, out of the said Supreme Court, against the body or goods and chattels of the party who ought to pay the same; but if such judgment shall be reversed then the party procuring such Certiorari shall in like manner recover his or her costs to be taxed and recovered as aforesaid.

XV. And be it further enacted, That in all causes to be brought in pursuance of this act, if the Defendant or Defendants in such suit or action shall neglect or refuse to plead and give in evidence, his, her or their account or demand if any he, she or they have against such Plaintiff or Plaintiffs, then the Defendant or Defendants so neglecting, or refusing to plead and give in evidence his, her or their accounts or demands as aforesaid, shall for ever thereafter be precluded from having or maintaining any action or actions against such Plaintiff or Plaintiffs for the recovery of such account or demand or any part thereof. Provided always, That where the balance found to be due to the Defendant exceeds the sum of three pounds, the Defendant shall not be precluded or barred from recovering his account or demand against such Plaintiff in any other Court of Record having cognizance of the same.

XVI. And be it further enacted, That in case the Defendant shall make oath that he or she cannot, for want of some material evidence or witness, safely proceed to trial, the Justice shall in such case postpone the trial for such reasonable time as will enable the Defendant to procure such evidence or witness. Provided, such time shall not exceed three months. And provided also, That such Defendant or Defendants before he, she, or they shall be intitled to have the trial postponed as aforesaid, shall give security to the said Justice to appear and answer the said action, and to pay the debt and damages and costs in case judgment shall be given against him, her, or them— Provided also, That in any suit or action to be brought by virtue of this act, if either the Plaintiff or Defendant shall request an adjournment, he shall not be intitled thereunto, unless the party requesting such adjournment (after having seen the account or demand of the adverse party) shall, if required, exhibit his or her account or demand, or state the nature thereof as far forth as may be in his or her power to the satisfaction of the Justice before whom the cause is to be tried, any thing in this act to the contrary notwithstanding.

XVII. 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.

XVIII. And be it further enacted, That from and after the passing of this act, all jurisdiction, power, authority, fees and rights given to, or exercised by any Clerk or Clerks of the Clerk's Court, and every of them, be fully and absolutely taken away and determined: And that an act made and passed in the twenty sixth year of His Majesty's reign intituled "An Act for the Regulating the Courts of Law established in the several Counties for the Trial of Causes to the Value of Forty Shillings," be and the same is hereby repealed; and that, from and after the passing of this act, all and every sum and sums of money not exceeding three pounds to be sued for and prosecuted in any Court of Record by virtue of any law of this province, shall be and are hereby made cognizable before any one Justice of the Peace in the manner aforesaid, and in no other Court whatsoever.

XIX. 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 of debt, detinue, account, covenant, trespass, and trespass on the case, not exceeding the sum of three pounds.

Provided always, That nothing in this act contained shall extend or be construed to extend to the City of Saint John, the preceding Section of this act only excepted.

XX. And be it further enacted, That this act shall continue and be in force two years and no longer.