

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1801.* Saint John, NB: John Ryan, Printer to the King's Most Excellent Majesty, 1801.

41 George III – Chapter 2

**An Act for the rendering Justices of the Peace more safe in the execution of their office; and for indemnifying Constables and others acting in obedience to their Warrants. Passed the 21st of February, 1801.**

Whereas Justices of the Peace are discouraged in the execution of their office by vexatious actions brought against them for, or by reason of small and involuntary errors in their proceedings; and whereas it is necessary that they should be (as far as is consistent with justice, and the safety and liberty of the subjects over whom their authority extends) rendered safe in the execution of the said office and trust: And whereas it is also necessary that the subjects should be protected from all wilful and oppressive abuse of the several Laws and Statutes committed to the care and execution of the said Justices of the Peace;

I. Be it enacted, by the Lieutenant Governor, Council and Assembly, That from and after the passing of this Act, no Writ shall be sued out against, nor any copy of any Process at the suit of a subject shall be served on any Justice of the Peace for any thing by him done in the execution of his office, until notice in writing of such intended Writ or Process shall have been delivered to him, or left at the usual place of his abode, by the attorney or agent for the party who intends to sue or cause the same to be sued out or served, at least one Calendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained, the cause of action which such party hath or claimeth to have against such Justice of the Peace; on the back of which notice shall be endorsed the name of such attorney or agent, together with the place of his abode, who shall be entitled to have the fee of ten shillings for the preparing and serving such notice, and no more.

II. And be it further enacted, That it shall and may be lawful to and for such Justice of the Peace at any time within one Calendar month after such notice given as aforesaid, to tender amends to the party complaining, or to his or her agent or attorney, and in case the same is not accepted, to plead such tender in bar to any action, to be brought against him, grounded on such Writ or Process, together with the plea of Not Guilty, and any other plea with the leave of the Court; and if upon issue joined thereon, the Jury shall find the amends so tendered, to have been sufficient, then they shall give a verdict for the Defendant, and in such case or in case the Plaintiff shall become nonsuit or shall discontinue his or her action, or in case judgment shall be given for such defendant or defendants, upon demurrer, such Justice shall be intitled to the like costs as he would have been intitled unto in case he had pleaded the general issue only; and if upon issue so joined the Jury shall find that no amends were tendered, or that the same were not sufficient, and also against the Defendant or Defendants on such other plea or pleas, then they shall give a verdict for the Plaintiff, and such damages as they shall think proper, which he or she shall recover, together with his or her costs of suit.

III. And be it further enacted, That no such Plaintiff shall recover any verdict against such Justice in any case where the action shall be grounded on any act of the Defendant as Justice of the Peace, unless it is proved upon the trial of such action, that such notice was given as aforesaid; but in default thereof such Justice shall recover a verdict and costs as aforesaid.

IV. And be it further enacted, by the authority aforesaid, that in case such Justice shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him by leave of the Court where such action shall depend, at any time before issue joined, to pay into Court such sum of money as he shall see fit; whereupon such proceedings ; orders and judgments shall be had, made, and given in and by such Court, as in other actions where the Defendant is allowed so pay money into Court.

V. And be it further enacted, That no evidence shall be permitted to be given by the Plaintiff on the trial of any such action as aforesaid, of any cause of action except such as is contained in the notice hereby directed to be given.

VI. And be it further enacted, By the authority aforesaid, That from and after the passing of this act, no action shall be brought against any Constable, or other officer, or against any person or persons acting by his order, and in his aid, for any thing done in obedience to any warrant under the hand or seal of any Justice of the Peace, until demand hath been made or left at the usual place of his abode by the party or parties intending to bring such action, or by his, her or their attorney or agent in writing signed by the party demanding the same of the perusal and copy of such Warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith by shewing the said Warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such Constable, or other officer, or against such person or persons acting in his aid for any such cause as aforesaid without making the Justice or Justices who signed or sealed the said Warrant, Defendant or Defendants, that on producing or proving such Warrant at the trial of such action, the Jury shall give their verdict for the Defendant or Defendants, notwithstanding any defect of jurisdiction in such Justice or Justices, and if such action be brought jointly against such Justice or Justices, and also against such Constable or other officer, or person or persons acting in his or their aid as aforesaid, then on proof of such Warrant the Jury shall find for such Constable or other officer, and for such person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction, as aforesaid; and if the verdict shall be given against the Justice or Justices, that in such case the Plaintiff or Plaintiffs shall recover his, her or their costs against him or them to be taxed in such manner by the proper officer as to include such costs as such Plaintiff or Plaintiffs are liable to pay to such Defendant or Defendants, for whom such verdict shall be found as aforesaid.

VII. Provided always, That where the Plaintiff in any such action against any Justice of the Peace shall obtain a verdict, in case the Judge before whom the cause shall be tried, shall in open Court certify on the back of the Record that the injury for which such action was brought, was wilfully and maliciously committed, the Plaintiff shall be entitled to have and receive double costs of suit.

VIII. Provided also, and be it enacted by the authority aforesaid, That no action shall be brought against any Justice of the Peace for any thing done in the execution of his office or against any Constable or other officer, or person acting as aforesaid, unless commenced within six Calendar months after the act committed.