

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1810. Saint John, NB: Jacob Mott, Printer to the King's Most Excellent Majesty, 1810.

50 George III – Chapter 17

An Act for the more easy and speedy recovery of small debts. Passed the 14th of March, 1810.

Be it enacted by the President, Council and Assembly, That all and every person and persons who now have, or hereafter have any debt or debts owing unto him, her, or them, not exceeding five pounds, shall or may cause the debtor or debtors, to be proceeded against for the recovery of such debt or debts, before any one of His Majesty's Justices of the Peace, in the several and respective Counties in this Province, in which such debtor or debtors respectively shall reside, or may be found, and the ordinary Process against such debtor or debtors, shall be by Summons under the hand and seal of such Justice, directed to a Constable of the Town or Parish where such debtor or debtors shall reside, or may be found, which process shall express the time and place of appearance, and cause of action, and shall be served six days at least before the time of trial, and such service shall be by reading the same in the hearing of such debtor or debtors, or by leaving a true copy thereof at the usual place of abode of such debtor or debtors, and where any debt shall be due, owing or demanded from any two or more persons jointly, by reason or on account of such persons being partners in trade or otherwise jointly concerned, the like service of any such Summons as aforesaid, on any one of such two or more partners, shall be as good and sufficient as if each were separately summoned as aforesaid.

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 plaintiff or defendant two days before, 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 defendant or defendants shall be allowed to set off any account or demand he, she, or they may have Set off 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 favor 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 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 Justice) such fine or fines, not exceeding the sum of ten shillings, as the said Justice shall think reasonable to impose.

IV. 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 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 debtors 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.

V. 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 him, with or without a Jury; and all judgments entered on default of the defendants appearance, in which case he shall assess the damages, of 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 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 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.

VI. And be it further enacted, That in every case where a debt not exceeding the sum of five pounds, shall be contracted for necessaries, by any person under the age of twenty one years, it shall be lawful for the person or persons to whom such debt shall be due, to sue for and recover such debt, before any Justice of the Peace as aforesaid, in the same manner, as if the person by whom the same shall be contracted, were of full age; and that in every case where any wages not exceeding the sum of five pounds, shall be due to any menial or other servant, under the age of twenty-one years, it shall be lawful for such servant, to sue for and recover such debt, before such Justice as aforesaid, in the same manner as if he, or she were of full age; and such Justice is hereby fully authorised and required to take cognizance of, and proceed concerning such debts in the same manner, and shall have such and the same powers, in regard thereto, as if the plaintiffs and defendants were all of full age.

VII. And be it further enacted, That in case any person or persons shall make oath, or, being of the people called Quakers, shall make affirmation, or give evidence, in any cause depending before any Justice of the Peace, under the authority of this Act, whereby any such person shall commit any wilful or corrupt perjury, or be guilty of wilful and false affirming, and thereof be duly convicted according to Law, then every such person shall incur and suffer the like pains and penalties as any other person convicted of wilful perjury, according to the Laws of this Province.

VIII. And be it further enacted, That no privilege shall be allowed to exempt any person from the jurisdiction of the said Justices Court, on account of his being an Attorney, or Solicitor, or any other officer of the Courts of Law or Equity, but that all Attornies, Solicitors and officers, shall be subject to the several Processes, Orders, Judgments, and Executions of the said Justices Court, in the same manner as any other persons are subject to the same by this Act.

IX. Provided always, and it is hereby declared, That this Act, or any thing herein contained shall not extend to any debt, where any title of freehold, or lease for years of any lands or tenements, shall come in question, or to any debt by specialty, which shall not be for payment of a sum certain, although the same respectively, shall not exceed five pounds, any thing herein contained to the contrary notwithstanding.

X. And be it further enacted, That if any action or suit, shall be commenced in any other Court, than the said Justices Court, for any debt not exceeding the sum of five pounds, and recoverable by virtue of this Act; in the said Justices Court, then, and in every such case, the plaintiff or plaintiffs, in such action or suit, shall not, by reason of a verdict or judgment, for him, her or them, or otherwise, have, or be intitled to any costs whatsoever, and if the verdict or judgment, shall be given for the defendant or defendants, in such Action or suit, and the Judge or the if I he Judges, before whom the same shall be tried, or heard, shall think fit to certify that such debt ought to have been recovered in the said Justices Court, then, and so often such defendant or defendants, shall have double costs, and shall have such remedy for recovering the same, as any defendant or defendants, may have for his, her, or their costs, in any cases by Law.

XI. Provided always, That nothing herein contained, shall extend, or be construed to extend to prevent or restrain any person or persons from making distress, or bringing any action or actions whatsoever for rent, and thereby recovering such rent with costs, although the same rent should not exceed the sum of five pounds.

XII. And for removing all doubts, whether the statute of limitations may be pleaded in the said Justices Court,—It is hereby further enacted and declared, that as well plaiintiifs in cases of set off, as defendants in that Court, shall be allowed to plead, or claim the benefit of any statute of limitations, and every such plaintiff or defendant, so pleading or claiming, shall have and receive such and the like advantage and relief thereby, as such plaintiff or defendant would have been intitled to, in case this Act had not been made, and such defendant had been sued for the same debt, or other cause of action in any other Court in this Province.

XIII. And be it further enacted, That no judgment rendered 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 sum recovered, 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 favour such judgment shall be rendered, shall recover his costs; and if such judgment be reversed, the party procuring such Certiorari, shall recover their costs.

XIV. 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, or may be found, commanding him to levy of the goods and chattels of the debtor, the amount of the judgment, and for want of goods and chattels to satisfy the same, together with 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 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.

XV. And be it further enacted, That no action or suit, shall be commenced against any person or persons for any thing done in pursuance of this Act, or on account of any order, determination, or judgment of any Justice of the Peace, under the authority, and by virtue of this Act, until fourteen days notice shall be given thereof in writing, to be delivered to, or left at the dwelling house or place of abode, of such Justice, or after sufficient satisfaction, or tender thereof, has been made to the party or parties aggrieved, or after three calendar months, next after the cause of action shall arise, and the defendant or defendants, in such actions and suits, and every of them may plead the general issue, and give this Act, and the special matter in evidence, at any trial or trials which shall be had thereon; and if the plaintiff shall be non-suited, or if a verdict or judgment shall and if judgment be given for the defendant or defendants therein, then, and in either of the said cases, such defendant or defendants, shall have double costs, and shall have such remedy for recovering the same, as any defendant or defendants may have for his, her, or their costs in any cases by Law.

XVI. And be it further enacted, That all debts not exceeding five pounds as aforesaid, made recoverable before any Justice of the Peace, by virtue of this Act, shall, in case the debtor or debtors reside, or may be found, in the City of Saint John, be recoverable before any Justice of the Peace, in any County, by virtue of this Act, and subject to the like provisions and exceptions in every respect, excepting and provided always that that the forms of the Process and proceedings, for the recovery thereof, shall be as hath at any time heretofore been accustomed, under and by virtue of the Charter of the said City, and the Act of Assembly, made and passed in the twenty-sixth year of His Majesty's Reign, intituled "An Act for regulating the Courts of Law, as established in the several Counties for the trial of causes to the value of forty shillings."—Provided also, that all executions, to be issued from the said City Court, shall be made returnable at the first or second sitting of the said Court, next after the time of issuing such execution, as the Clerk of the said Court, in his discretion, shall think fit.

XVII. And be it further enacted, That no greater or other costs, shall be allowed or taxed in actions brought before any Justice of the Peace, by virtue of this Act, than the following, to wit. Justices fees, Summons, sixpence, Capias and Affidavit, one shilling, Trial and Judgment, one shilling, Subpoena, four pence, Venire, six pence, Execution, nine pence. To every witness who shall appear in the opinion of the Justice to have been necessary, for attendance one shilling per day, and three pence per mile, from his place of residence to that of the Justice by whom the Process has been issued. Constable or proper Officer for serving a Capias or Summons, six pence, serving an Execution, for every pound six pence, mileage for one mile or under, one shilling, for every mile more, three pence; the travel to be computed from the place of residence of the Officer to that of the defendant, or where he shall be found, and from thence to the Justices residence, before whom the process is returnable. Constable for summoning a Jury, one shilling, serving a Subpoena for less than one mile, six pence, and three pence for every other mile, Jurors, one shilling each.

XVIII. Provided always, and be it further enacted, That the Justices of the Peace, in the several Counties, shall respectively have concurrent jurisdiction with the Clerk's Courts, in the respective Counties, in all causes by Law cognizable by the same Courts, where the sum or thing in demand, does not exceed forty shillings, any Law, usage, or custom to the contrary notwithstanding.