

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1827.* Fredericton, NB: George K. Lugin, Printer to the King's Most Excellent Majesty, 1827.

8 George IV – Chapter 4

**An Act for the more easy assessment of damages in actions on Bonds payable by Instalments, and other similar Instruments, and for the more convenient service of Writs of Scire Facias. Passed the 19th March, 1827.**

Whereas much inconvenience and expense are incurred in actions brought upon Bonds or on Penalties for the nonperformance of Covenants and Agreements contained in any Indentures, Deeds or other Writings in consequence of the Laws now in force requiring the Damages on breaches assigned or suggested on the Record in all cases to be assessed after Judgments upon Demurrer, or by Confession or default by Juries for that purpose, to be summoned: And whereas it is considered that in many of the said Cases the Damages may be assessed by the Court in which such actions are brought, which will much lessen the expence and inconvenience of such proceedings.

I. Be it therefore enacted by the Lieutenant-Governor, Council and Assembly, That from and after the passing of this Act in all actions in any of His Majesty's Courts of Record in this Province, upon any Bond or Bonds conditioned for the payment of money by instalments, or for the performance of Agreements or Awards, where such Agreements or Awards are expressed only for the payment of any sum or sums of Money: And in all Actions for any penal sums for nonperformance of any Covenants or Agreements in any Indenture, Deed or Writing contained, where such Covenants or Agreements are only for the payment of Monies in which Judgment shall be given for the Plaintiff or Plaintiffs, upon Demurrer, or by Confession or *Nihil dicit*; the truth of all breaches assigned or suggested on the Record may be inquired of, and the Damages thereupon assessed by the Court without the intervention of a Jury; the costs and charges of such proceeding to be borne by the Defendant or Defendants; which inquiry and assessment shall be entered upon the Record; and Execution may thereupon be taken out for the Damages so assessed, together with Costs of Suit, in like manner as if such Damages had been assessed by a Jury in the manner heretofore accustomed.

II. Provided always and be it further enacted, That in each case such Judgement shall, as now accustomed, remain, continue, and be as a further security to answer to the Plaintiff or Plaintiffs, and his or their Executors or Administrators, such Damages as shall or may be sustained for further breach of any Condition of Covenant in the said Bond, Indenture, Deed or Writing contained, upon which the Plaintiff or Plaintiffs may have a *Scire Facias* upon the said Judgment against the Defendant or against his Heir terre-tenants, or his Executors or Administrators suggesting such other breach or breaches, and to summon him or them respectively to show cause why Execution shall not be had or awarded upon the said Judgment; and if no appearance be entered by the Defendant or Defendants, upon such *Scire Facias*, the Courts in which such Actions have been brought, are respectively authorized and empowered to assess such further damages, and to award Execution for such damages, together with the costs and charges of such proceeding, in

manner as herein-before directed: And so in case of any further breaches a further assignment or suggestion may be made, and the like proceedings may be had as herein-before directed.

III. Provided nevertheless, and be it further enacted, That nothing in this Act contained shall extend or be construed to prevent the Defendant or Defendants from having a Jury summoned to assess the Damages upon the breaches assigned in the manner heretofore accustomed; Provided he, she, or they give Notice to the Plaintiff or Plaintiffs of such wish or intention, within ten days after Judgment is signed in the action or such *Scire Facias* served. And provided also, that the Court in which such Action is brought, shall have full power to order and direct the Damages to be assessed by a Jury in any case where the same may appear proper or expedient; and to award Execution thereupon in the manner in and by this Act directed.

IV. And whereas it is expedient to provide the more easy and effectual service of Writs of *Scire Facias*. Be it further enacted that the personal services of a Copy of a Writ of *Scire Facias* shall in all cases be taken and considered as good service of such Writ, and as tantamount to a return of *Scire Feci* by the Sheriff, provided an affidavit be duly made and filed of such personal service; and that such writ may be directed to the Sheriff of any County within the Province, wherein the Person or Persons to be served therewith, may be found whether it be the same or a different County from that in which the Court sits, or in which the venue is laid; And also that such Writ of *Scire Facias* may be so personally served in any County of this Province, notwithstanding it may be directed to the Sheriff of any other County within the same.