

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1830. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1830.

10 & 11 George IV – Chapter 21 (Session 1)

An Act to alter and amend an Act for the more speedy recovery of small debts. Passed 8th March, 1830.

Whereas, in and by the first Section of an Act made and passed in the fiftieth year of the Reign of His late Majesty King George the Third, intituled, "An Act for the more easy and speedy recovery of small debts;" it is among other things provided and enacted, that the service of the Summons or Process therein mentioned, shall be by reading the same in the hearing of the debtor or debtors, or by leaving a true copy thereof at the usual place of abode of such debtor.

And whereas, The service of such process, by leaving a copy thereof at the usual place of abode, as aforesaid, has been productive, of great injustice, by reason of such debtor being thereby deprived of any notice of a defence to such action,

I. Be it therefore enacted by the President, Council and Assembly, That so much of the said first section of said Act, as authorizes such service to be made, by leaving a copy of such process at the usual place of abode of such debtor, be, and the same is hereby repealed ; and in lieu thereof; be it further enacted, that in all cases, the service, of any such process shall be made, either by reading the process to the debtor, or by serving him personally with a copy thereof.

II. And whereas, by the fourth section of the said Act, Constables are directed to take bail for the Defendant's appearance at the time and place specified in the Writ, but does not direct in whose name the same shall be taken.

Be it therefore further enacted, That the security so required shall be taken in the name of the plaintiff in a sum, not to exceed five pounds, and if the Defendant does not appear agreeably to notice, it shall be the duty of the Justice, upon the due return of a *capias*, to proceed in the same way and manner as is provided in and by the second section of the before mentioned Act, and give judgment thereon as therein directed. And if upon issuing execution against the Defendant, he cannot be found, and there shall not be sufficient property whereon to levy, it then shall be lawful for the said Justice to issue his execution against the goods and chattels of the bail for the amount of such judgment; and the security to be in the form following, that is to say :—

I, A. B. do bind myself in the sum of _____ to be levied on my respective goods and chattels, without further notice, if G. C. shall make default in appearing before I. F. Magistrate, to answer to a cause depending between C. D. Plaintiff, and the said G. C. Defendant, on the _____ day of _____ next ensuing the date hereof.

III. And be it further enacted, That no person whomsoever, 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 or the Act

to which this is an amendment, to which such person is not a party unless such person to 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.

IV. And whereas, it is necessary, in order to prevent a multiplicity of suits, that when any person is sued, pursuant to the directions of the said Acts, that he or she should be compelled to bring forward his or her set off, (if any they have,) against the Plaintiff at the trial.

Be it therefore further enacted, That when any Defendant is proceeded against under the said Acts, shall refuse or neglect to bring forward his or her setoff, (if any they have) against the Plaintiff at the time of such trial, that he or she shall ever after be precluded from suing for the same; and if any such suit be brought, it shall be a sufficient defence on the trial thereof, that the demand sued for, could have been, on a former trial, set off or recovered.