

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1834.* Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1834.

4 William IV – Chapter 17

**An Act to facilitate summary Proceedings before justices of the Peace, and the Execution of Warrants by Constables. Passed 22d March 1834.**

I. Be it enacted by the Lieutenant Governor, Council and Assembly, That wherever in any Act of Assembly, or of the Imperial Parliament, now in Force or hereafter to be made, any Penalty or Forfeiture is or shall be directed to be recovered before any Justice or Justices of the Peace, such Penalty or Forfeiture may be levied and recovered by Warrant of Distress of the Offender's Goods and Chattels, under the Hand and Seal of such Justice, or Hands and Seals of such Justices, unless otherwise expressly directed by the Acts aforesaid imposing such Penalty or Forfeiture; and it shall and may be lawful for such Justice or Justices granting such Warrant, therein to order and direct the Goods and Chattels so to be distrained to be sold and disposed of within a certain Time to be limited in such Warrant, so as such Time be not less than Two Days, nor more than Four Days, unless the Penalty or Sum of Money for which such Distress shall be made, together with the reasonable Charges of taking and keeping such Distress, be sooner paid; and that in any Case where the Justice or Justices is or are empowered to award Costs to be paid by the Offender, it shall and may be lawful for such Justice or Justices to include the same in the Warrant of Distress and Sale, specifying the Amount so awarded for Costs in such Warrant, and therein directing the same to be levied, in Addition to the Penalty in which the Party may have been convicted, by Distress and Sale of the Offender's Goods and Chattels.

II. And be it enacted, That the Officer making such Distress, shall and is hereby empowered to deduct the reasonable Charges of taking, keeping, and selling such Distress, out of the Money arising by such Sale, and the Overplus (if any) after such Charges, and also the said Penalty or Forfeiture, and Costs (if any) mentioned in such Warrant, shall be fully satisfied and paid, shall be returned on Demand to the Owner of the Goods and Chattels so distrained; and the Officer executing such Warrant, if required, shall shew the same to the Person whose Goods and Chattels are distrained, and shall suffer a Copy thereof to be taken.

III. And be it enacted, That wherever in any Act of the Imperial Parliament as aforesaid, any Penalty or Forfeiture is or may be recoverable before any Justice or Justices of the Peace, and no Authority is thereby given to commit any Offender or Offenders in Default of Payment of such Penalty or Forfeiture, or of Goods and Chattels whereon to distrain, such Justice or Justices is or are hereby empowered, in Default of Payment of such Penalty or Forfeiture, and for Want of sufficient Goods and Chattels of the Offender whereon to levy such Penalty or Forfeiture, together with the Charges of distraining and selling the same, to commit the Offender to the common Gaol or House of Correction, for such Space of Time, not exceeding Three Months, as he or they in his or their Discretion shall think fit.

IV. And be it enacted, That wherever in any Acts as aforesaid; any Penalty or Forfeiture is or may be recoverable before any Justice or Justices of the Peace, and such Justice or Justices is or are empowered by such Acts, as aforesaid, or by this Act, in Default of Payment of such Penalty or Forfeiture, or for Want of sufficient Goods and Chattels of the Offender whereon to levy such Penalty together with the Charges of distraining and selling the same, to commit the Offender to the common Gaol or House of Correction, then in case it shall appear to such Justice or Justices, either by Confession of the Party or otherwise, that he hath not sufficient Goods and Chattels within the Jurisdiction of such Justice or Justices whereon to levy such Penalty or Forfeiture, Costs and Charges, such Justice or Justices at his or their Discretion, and without issuing any Warrant of Distress, may proceed in such and the like Manner as if a Warrant of Distress had been issued, and a *Nulla Bona* returned thereon; and it shall be lawful for such Justice or Justices to issue, forth his or their Warrant for committing such Offender to the common Gaol or House of Correction, for such Time and in such Manner as in such Acts as aforesaid, or this Act, are respectively mentioned and directed; and such Justice or Justices may also in such Case keep and detain the said Offender in Custody after Conviction until the Warrant for his Commitment is prepared.

V. And be it enacted, That in the Case of any Offender committed to the common Gaol or House of Correction for Default of Payment of such Penalty or Forfeiture, and any Costs or Charges attending the Conviction, if such Offender shall at any Time during the Period of his or their Imprisonment pay or cause to be paid to the Keeper of the Prison the full Amount of such Penalty or Forfeiture, together with the Costs and Charges, it shall be lawful for such Keeper of such Prison, and he is hereby required, forthwith to discharge such Offender from his Custody; and such Keeper shall immediately give Notice thereof to the Justice or Justices by whom the Commitment may have been made, and pay over to him or them the Money so received from the Offender, to be by such Justice or Justices paid, distributed, or applied as the Acts aforesaid may direct.

VI. And Whereas Cases may occur where the Recovery of such Penalty or Forfeiture by Distress and Sale of the Offender's Goods and Chattels, may appear to the Justice or Justices of the Peace to be attended with Consequences ruinous, or in an especial Manner injurious to the Offender and his Family; Be it enacted, That the Justice or Justices shall be empowered, and they are hereby authorized, in all Cases and upon all such Occasions as to them shall seem fit, and where such Consequences are likely to arise, to cause to be withheld the Issue of any Warrant of Distress, and to commit the Offender aforesaid, immediately after Conviction and in Default of Payment of the Penalty or Forfeiture, with Costs and Charges, (where such shall be adjudged,) to the common Gaol or House of Correction, for such Time and in such Manner as are in such Acts as aforesaid respectively mentioned and directed; Provided always, that it be by the Desire, or with the Consent, in Writing, of the Party upon whose Property the Penalty or Forfeiture is to be levied.

VII. And Whereas Inconveniences often arise in summary Proceedings before Justices of the Peace, from a Want of a general Form of Conviction; Be it enacted, That in all Cases where a Conviction shall take place, and no particular Form for the Record thereof hath been directed, the Justice or Justices duly authorized to proceed summarily therein, and before whom the Offender or Offenders shall be convicted, shall and may cause the Record of such Conviction to be drawn up in the Manner and Form following, or in any Words to the same Effect, *mutatis mutandis*; (that is

to say,) County of (or as the Case may be). Be it remembered, that on the \_\_\_\_\_ Day of \_\_\_\_\_ in the Year of our Lord \_\_\_\_\_, at \_\_\_\_\_ in the County of \_\_\_\_\_, A. B. of \_\_\_\_\_, in the County of \_\_\_\_\_, Labourer (or as the Case may be), personally came before me (or before us &c.) C. D. One (or more as the Case may be) of His Majesty's Justices of the Peace for the said \_\_\_\_\_, and informed me (or us &c.) that E. F. of \_\_\_\_\_, in the County of \_\_\_\_\_, on the \_\_\_\_\_ Day of \_\_\_\_\_ at \_\_\_\_\_ in the said \_\_\_\_\_, did (here set forth the Fact for which the Information is laid,) contrary to the Form of the Act of Assembly (or of the Imperial Parliament) in such Case made and pro-vided, whereupon the said E. F. after being duly summoned to answer the said Charge appeared before me (or us &c.) on the \_\_\_\_\_ Day of \_\_\_\_\_, at \_\_\_\_\_ in the said \_\_\_\_\_, and, having heard the Charge contained in the said Information, declared he was not guilty of the said Offence (or, as the Case may happen to be, did not appear before me or us &c., pursuant to the said Summons, or did neglect and refuse to make any Defence against the said Charge), whereupon I (or we &c. or nevertheless I or we &c.) the said Justice (or Justices) did proceed to examine into the Truth of the Charge contained in the said Information, and on the \_\_\_\_\_ Day of \_\_\_\_\_ aforesaid, at the Parish of aforesaid, One credible Witness, to wit. A. W. of \_\_\_\_\_ in the County of \_\_\_\_\_ upon his Oath deposeth and saith (if E.F. be present say in the Presence of the said E.F.) that on the \_\_\_\_\_ Day of \_\_\_\_\_ the said E. F. at \_\_\_\_\_ in the said County of \_\_\_\_\_, (here state the Evidence as nearly as possible in the Words used by the Witness, and if more than One Witness be examined state the Evidence given by each, or if the Defendant confess instead of stating the Evidence, say and the said E. F. acknowledged and voluntarily confessed the same to be true); therefore it manifestly appearing to me (or us &c.), that he the said E. F. is guilty of the Offence charged upon him in the said Information, I (or we &c.), do hereby convict him of the Offence aforesaid, and do declare and adjudge that he the said E. F. hath forfeited the Sum of \_\_\_\_\_ of lawful Money of \_\_\_\_\_, for the Offence aforesaid, to be distributed (or paid as the Case may be) according to the Form of the Act of Assembly (or of the Imperial Parliament) in that Case made and provided (if the Acts as aforesaid allow Costs to be awarded add and also the Sum of \_\_\_\_\_ now by me or us &c. adjudged to the said A. B. for the Costs of this Prosecution, pursuant to the said Act). Given under my Hand (or our Hands &c.) and Seal (or Seals &c.) the \_\_\_\_\_ Day of \_\_\_\_\_ in the Year of our Lord \_\_\_\_\_.

VIII. And be it enacted, That in all Cases where Two or more Justices are authorized and required to hear and determine any Complaint, One Justice shall be competent to receive the original Information or Complaint, and to issue the Summons or Warrant requiring the Party to appear before Two or more Justices of the Peace, and after Examination upon Oath into the Merits of the said Complaint, or Confession of the Party, and the Adjudication thereupon by any such Two Justices, all and every the subsequent Proceedings to enforce Obedience thereto, or otherwise, whether respecting the Penalty, Fine, Imprisonment, Costs or other Matter or Thing now enacted or to be hereafter enacted, may be enforced by either of the said Justices, or any other Justice of the Peace for the same County or City and County, in such and the like Manner as if done by the same Two Justices who so heard and adjudged the said Complaint; and where the original Complaint or Information shall be made to any Justice or Justices of the Peace different from him

or them before whom the same shall be heard and determined, the Form of Conviction shall be made conformable and according to the Fact.

IX. And be enacted, That in all Cases where it appears by the Conviction that the Defendant has appeared and pleaded, and the Merits have been tried, and that the Defendant has not appealed against the said Conviction, where an Appeal is allowed, or, if appealed against, the Conviction has been affirmed, such Conviction shall not afterwards be set aside or vacated in consequence of any Defect of Form whatever, but the Construction shall be such a fair and liberal Construction as will be agreeable to the Justice of the Case.

X. And whereas Warrants addressed to Constables and other Peace Officers of Parishes or Places in their Character of and as Constables or other Peace Officers of such respective Parishes or Places, cannot be lawfully executed by them out of the Precincts thereof respectively, whereby Means are afforded to Criminals and others of escaping from Justice; For Remedy whereof, Be it enacted, That it shall and may be lawful to and for each and every Constable and other Peace Officer for any such Parish or Place to execute any Warrant of any Justice or Justices of the Peace within any Parish or Place situate, lying or being within the Jurisdiction of such Justice or Justices granting or backing such Warrant, in such and the like Manner as if such Warrant had been addressed to such Constable or other Peace Officer specially by his Name, and notwithstanding the Parish or Place in which such Warrant shall be executed shall not be the Parish or Place for which he shall be Constable or other Peace Officer; Provided the same be within the Jurisdiction of the Justice or Justices so granting such Warrant, or within the Jurisdiction of the Justice or Justices by whom any such Warrant shall be backed or endorsed.

XI. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to Proceedings in Civil Suits before any Justice or Justices of the Peace.