

*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 41

**An Act to establish and regulate a Summary Practice in the Supreme Court. Passed 22d March 1834.**

Whereas the present Practice of proceeding in the Supreme Court where the Matter in Demand is under Twenty Pounds in Value, has been found to be attended with an Expense greatly disproportioned to the Amount in Question;

I. Be it therefore enacted by the Lieutenant Governor, Council and Assembly, That His Majesty's Supreme Court of Judicature in this Province is hereby empowered, in all Actions of Debt, Covenant, Assumpsit, Trover and Conversion, and Trespass to personal Property, instituted in the said Court, the Sum total whereof shall not exceed Twenty Pounds, to proceed in a summary Way, by the Examination of Witnesses in open Court or other legal Evidence, to try the Merits of such Causes wherein no dilatory Plea shall be admitted, and to determine thereon according to Law, and enter up Judgment accordingly, unless such Cause shall be put to Issue by a Jury, in which Case such Cause shall be tried according to the Rules and Practice of said Court as in other Cases.

II. And be it enacted, That in the said Causes the Bill of Complaint or Declaration shall be inserted in the Writ, a Copy of which, with a Copy of the Particulars of the Plaintiffs Demand, in Cases where the Defendant is entitled to the same, shall be served on the Defendant or Defendants, who shall at the Term to which the Writ is returnable, or within Twenty Days after, put in Bail or enter his or their Appearance in the said Action, and if he or they intend to defend the same file the general Issue and give a Copy thereof to the said Plaintiff or Plaintiff's Attorney, and the said Cause shall be tried and determined by the Court or Jury according to the Rules and Practice of the said Court, made or to be made for such Purpose; and in case the Defendant or Defendants shall not at the Term to which the Writ is returnable, or within Twenty Days after as aforesaid, file the general Issue in the said Cause, and give to the said Plaintiff or Plaintiff's Attorney a Copy thereof, that then Judgment may be entered by Default in the said Cause at the next succeeding Term, and the Court assess the Damages as has been heretofore accustomed.

III. And be it enacted, That the Clerk of the said Court shall keep a Book in which shall be entered a Memorandum of all final Judgments so given in every Cause, whether by Default, or tried or determined in a summary Way, either by the said Court or a Jury under the Provisions of this Act, a Copy of which said Judgment, certified by the said Clerk under the Seal of the Court, shall be Evidence of the said Judgment in all Courts within this Province.

IV. And be it enacted, That the Venue in all summary Causes within the Meaning of this Act, shall be set forth in the Margin of the Writ, subject to be changed by Rule or Order of the said Court, according to the ordinary Practice thereof, and if any Cause in which the Venue shall be laid or changed in or to any other County than the County of York, shall be defended and put to a Jury as

aforesaid, the same shall be tried at *nisi prius* in the County in or to which the Venue is laid or changed, in such Manner and Form as the said Supreme Court by general Rule or Order thereof shall prescribe and direct.

V. And be it enacted, That the Fees attending the Prosecution of Suits in a summary Way as aforesaid shall be as follows: namely, To the Justices of said Court, on the Entry of every Cause, Three Shillings and Four Pence; Trial Three Shillings and Four Pence; Clerk, for signing and sealing the Writ and filing Precipe, One Shilling and Sixpence; Filing all other Papers Sixpence each; Filing Writ and entering Cause, One Shilling and Sixpence: Taxing Costs, One Shilling; Entering Memorandum and signing final Judgment, Three Shillings; Entering Defendant's Appearance and filing Plea, One Shilling and Sixpence; To the Attorney, on commencing every Action, for Writ, Precipe, Affidavit and Declaration, Eleven Shillings and Eight Pence; Copy thereof for Defendant, Five Shillings; Bill of Particulars Sixpence per Folio, for Original and Copy; Attending Taxation of Costs, One Shilling; Attending Execution of Writ of Inquiry, Three Shillings and Four Pence and in all Cases that do not go to a Jury, for all other Proceedings until final Judgment, Eight Shillings and Four Pence; And for every Motion before the Court in Banc, actually made in open Court and entered in the Minutes, Three Shillings and Four Pence; On every Cause entered for Trial, and for every Argument before the Court in Banc, not less than Half a Guinea nor more than Two Guineas, in the Discretion of the presiding Judge; and for all other necessary Proceedings in the conducting of any Cause under the Provisions of this Act to final Judgment, not provided for in this Section, Sixpence per Folio; and in Actions tried at the Circuit, the Clerk of the Circuits be allowed Half the Fees now taxable in other Cases not summary.

VI. And be it enacted, That the Costs of defending in all Actions commenced or prosecuted under this Act shall be the same as are now allowed and taxable in the Inferior Courts of Common Pleas for like Services.

VII. And be it enacted, That the ordinary Course of Practice of the Supreme Court shall regulate the Proceedings in summary Actions, in Matters not herein specially provided for, and that the Judges of that Court may from Time to Time establish such other Rules in Relation to summary Actions, not repugnant to this Act, as to them may seem expedient.

VIII. And be it enacted, That if the Plaintiff proceed according to the ordinary Practice of the Court, in any Case in which by the Provisions of this Act the Proceedings ought to be summary, he shall not be entitled in any such Case to more Costs than if he had proceeded in a summary Manner, unless he obtained the Order of the Court or Judge for the larger Costs upon good Causes shewn therefor.

IX. And be it enacted, That no Fees for the Execution of Writs, whether Capias or Summons, shall in any Case be taxable or allowed in the Costs, unless such Writ has been served by the Sheriff or some or One of his Deputies or Officers, unless it shall appear that such Sheriff, Deputy or other Officer shall have neglected or refused to serve such Writ or Writs.

X. And be it enacted, That no Judgment in summary Actions shall affect or bind Lands; nevertheless in summary Actions Lands may be taken on Execution and sold under the like Regulations as in other Cases.

XI. And be it enacted, That this Act shall not go into Operation, until after the Tenth Day of May next, and that all Actions commenced before this Act goes into Operation, shall be continued in to final Judgment in the same Manner as if this Act had not been made and passed, any Thing herein to the contrary notwithstanding.