

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 45

An Act to Regulate Proceedings before Justices of the Peace in Civil Suits. Passed 22d March 1834.

I. Be it enacted by the Lieutenant Governor, Council and Assembly, That the following Acts of Assembly, giving Jurisdiction to Justices of the Peace in Civil Suits, be and are hereby repealed, viz: An Act made and passed in the Fiftieth Year of the Reign of King George the Third, intituled *An Act for the more easy and speedy Recovery of small Debts*; also an Act made and passed in the Eleventh Year of the Reign of King George the Fourth, intituled *An Act to alter and amend an Act for the more speedy Recovery of small Debts*; and an Act made and passed in the Second Year of the Reign of King William the Fourth, intituled An Act to amend an Act passed in the Fiftieth Year of the Reign of His Majesty King George the Third intituled "*An Act for the more easy and speedy Recovery of small Debts.*"

II. And be it enacted, That every Justice of the Peace shall have Jurisdiction over, and Cognizance of, the following civil Actions:

First. Actions for the Recovery of any Debt, wherein the Amount of the Debt or Sum in Demand shall not exceed Five Pounds.

Second. Actions of Trespass, and Trespass on the Case, including Trover, for Injuries to personal Property wherein the Damages claimed shall not exceed Forty Shillings.

Third. Actions of Trespass to real Property wherein the Damages shall not exceed Forty Shillings.

Provided that no Justice of the Peace shall have Cognizance of any Civil Action:

First. Where the King is a Party.

Second. Where the Title to Land shall in any Wise come in Question.

Third. Nor of any Action for the Recovery of any Debt or Debts where the Sum total of the Plaintiff's Demand or Cause of Action shall exceed Five Pounds, and shall not have been reduced by actual Payments as low as Five Pounds.

Fourth. Nor of any Action for a Debt by Specialty, which shall not be for Payment of a Sum certain.

Fifth. Nor of Actions against Executors, Administrators, Trustees of absconding Debtors, or Corporations.

III. And be it enacted, That the following Regulations shall be kept and observed in regard to the Process and Proceedings before Justices of the Peace in civil Suits; (that is to say,)

That Actions cognizable before any Justice of the Peace, may be brought by and against all Persons who sue or are sued in their own flight, and by Executors, Administrators, Trustees of absconding Debtors, Corporations and all other Persons to whom any Right of Action is given by Law.

That no Person shall be exempted from the Jurisdiction of Justices' Courts, by reason of any Privilege of the General Assembly or of any Privilege as an Attorney, Solicitor, Clerk or other Officer of any Court of Law or Equity.

Provided that no Process shall be issued for a Plaintiff under the Age of Twenty one Years, (except for a Menial or other Servant for Wages,) until a next Friend for such Plaintiff be appointed; and that upon Application made, the Justice shall appoint some suitable Person, who will consent thereto in Writing, to be named by such Plaintiff, to act as his next Friend in such Suit, who shall be responsible for the Costs therein.

That no Action shall be brought or maintained against any Person under the Age of Twenty one Years, for or upon any Debt, Contract or Agreement, except for Necessaries.

That upon the Request of a Defendant under the Age of Twenty one Years, the Justice may appoint some Person to be named by the Defendant, or if the Defendant neglect to nominate, the Justice may in his Discretion appoint some fit Person, as Guardian for the Defendant, who shall be allowed to defend for the Infant, but who shall not be liable for Costs in the Suit.

That no Justice shall hold a Court for the hearing or Trial of any Action to be brought under the Provisions of this Act, in any other Parish than that in which such Justice resides, excepting he should be requested to attend at the Residence and in Behalf of some other Justice as hereinafter provided.

That every Action coming within the Jurisdiction of a Justice's Court shall be brought before some Justice.

That all Suits shall be commenced by Process, and Process shall be either a Summons or a Capias. That the ordinary Process in all Cases shall be a Summons directed to any Constable of the Parish wherein the Defendant resides or may be found, commanding him to summon the Defendant to appear before the Justice who issued the same, at a Time and Place to be named in such Summons, not less than Six nor more than Thirty Days from the Date of the same, to answer the Plaintiff for the Cause of Action in the same Summons to be mentioned; which Summons may be served by any Constable of the Parish, or by any other Person who may, at the Instance of the Plaintiff, be specially appointed by the Justice, and whose Name shall be endorsed by the Justice on the Summons, at or before the Delivery thereof to such Person; Provided that no Person other than a Constable shall be entitled to any Fees upon the Service of such Summons.

That a Summons shall in all Cases be served at least Six Days before the Time of Appearance mentioned therein, in the Manner following; (that is to say,)

First. If the Defendant shall be found, it shall be served by Delivery to him of a Copy thereof; and by reading the same to him, or acquainting him with the Contents, if required by him.

Second. If the Defendant shall not be found, it shall be served by leaving a Copy thereof at his last Place of Abode, in the Presence of some Person residing in the House, of suitable Age and Discretion, who shall be informed of its Contents.

That every Constable serving a Summons shall return thereupon in Writing the Time and Manner in which he executed the same, and sign his Name thereto; and if required by the Justice, or either of the Parties, shall verify such Return by Oath before such Justice; or such Return may be verified by written Affidavit to be taken and subscribed before the said Justice or any other Justice of the Peace, or any Person authorized to take Affidavits in the Supreme Court; and that every Person, other than a Constable, serving a Summons, shall make a like Return, and shall verify the same by Oath or Affidavit as above provided.

That a Justice shall, upon Application, issue a Capias, when it is made to appear on Affidavit, to be taken in Writing, of the Plaintiff or his Agent, that the Cause of Action does not exceed Five Pounds, that the Defendant is justly and truly indebted to the Plaintiff in a Sum to be specified in the Affidavit, which shall not be less than Twenty Shillings, after giving full Credit to the best of the Deponent's Knowledge or Belief for all Payments and Off Sets, that he doth verily believe that the Defendant is of the full Age of Twenty one Years, and that there is Danger of losing the Debt, if the Defendant be not arrested or held to Bail: Provided, that no Capias shall be issued against any Person having Privilege of the General Assembly, or against any Female.

That a Capias shall be directed to any Constable of the Parish wherein the Defendant resides or may be found, and shall command such Constable to take the Defendant, and bring him forthwith before such Justice, unless he shall give good Bail to the Suit; and such Capias shall also state the Time and Place at which the Suit is to be heard and determined.

That a Capias shall be served by arresting the Defendant, and at the same Time delivering him a Copy of such Capias, and also, if he shall require it, reading the same to him, or acquainting him with its Contents.

That the Constable shall upon such Arrest take Bail for the Defendant, if good and sufficient Bail be tendered; which Bail shall thereupon subscribe a Memorandum to be endorsed on the Capias, or written at the Foot thereof, to the Effect that he or they become Bail; but if such Bail be not tendered, he shall carry the Defendant before the Justice by whom such Capias was issued, or in Case of his Sickness or Absence, before some other Justice of the County.

That when a Defendant shall be brought before a Justice upon a Capias, such Justice shall either,

First. Admit him to Bail, if any One or more responsible Person or Persons resident in the County be willing to become Bail, and shall subscribe a Memorandum to that Effect to be endorsed on the Capias or subjoined thereto, and shall, unless allowed by the Plaintiff, justify by Affidavit; which Affidavit shall state the Place of Residence and Occupation of the Person so offering himself as Bail, that he is really and bona Fide worth Double the Sum for which the Defendant may have been held to Bail, over and above what would pay all his just Debts, and in addition to the necessary wearing Apparel and Bedding of himself and Family, Fuel and Tools of Trade.

Secondly. Or take a Deposit to the Amount of the Debt sworn to, together with Five Shillings for Costs, over and above the Constable's Mileage, the Amount of which Mileage shall also be deposited, as Security for the Defendant's satisfying the Plaintiff for the Amount which he may recover in the Suit.

Thirdly. Or, in Case of the Defendant failing to give such Bail, or make such Deposit, by Warrant under his Hand, commit the Defendant to the Gaol of the County till discharged by due Course of Law, or until the Debt and Costs be paid; such Warrant to state the Amount for which the Defendant is arrested, and the time Detention; and that it shall be the Duty of the Constable thereupon to carry and convey the Defendant to the said common Gaol and deliver him to the Keeper of such Gaol, together with the said Warrant; but such Defendant shall not be liable to be detained in Custody for any longer Period than One Day for every Two Shillings of the Sum stated in the Warrant; and if charged in Execution while so in Custody on the Capias, the Time during which the Defendant shall have been confined under the Capias, shall go in Discharge of an equal Portion of the Imprisonment to which he would be liable under the Execution: Provided always, that no Gaoler shall be liable to an Action for detaining any Defendant so committed beyond the legal Period, unless he shall have demanded his Discharge, or unless such Detention shall appear to have been wilful and malicious.

That a Defendant so committed to Gaol, shall any Time before final Judgment be entitled to his Release on Bail being put in for him, and justified or allowed as aforesaid, before the Justice who may have issued the Capias, or in Case of his Sickness or Absence, any other Justice of the County; and the Justice before whom such bail is put in shall grant an Order for the Release of the Defendant, directed to the Gaoler, who shall, upon the Delivery of such Order to him, discharge the Defendant from Custody.

That it shall be the Duty of a Justice taking Bail or receiving a Deposit, in a Case not pending before him, forthwith to transmit the Capias with the Endorsement of Bail thereon, or the Sum deposited, (as the Case may be,) to the Justice by whom the Capias may have been issued, who shall proceed thereupon in like Manner as if the Bail had been entered or deposit made with him.

That the Bail for any Defendant, whether entered before a Constable or a Justice, shall be answerable for the Defendant's paying the Amount of Debt and Costs which the Plaintiff may recover against him, or that his Body be rendered into Custody upon Execution, if such Execution be taken out and delivered to a Constable, for the purpose of being executed, within Forty Days after Judgment, or within Forty eight Hours after Service of n written Notice by the Bail to the

Plaintiff or his Agent requiring such Execution to issue; and if such Execution be not taken out and delivered to a Constable within the said Period of Forty Days after Judgment, or within Forty eight Hours after such Notice as aforesaid, in either of such Cases, the Bail shall be discharged from any further Liability; Provided also, that the Bail may require the Plaintiff to take out Execution forthwith after Judgment, and may take and detain the Defendant until such Execution is prepared and delivered to a Constable, and thereupon commit him to the Custody of such Constable upon such Execution, and if the Plaintiff shall upon such Requisition refuse to take out Execution, the Bail shall be discharged; Provided also, that the Defendant so delivered by his Bail into Custody, shall be entitled to his Release, on pointing out to the Constable sufficient available Property whereon a Levy may be made for the Amount of the Execution and Charges.

That every Constable serving a Capias, shall return thereupon in Writing the Manner in which he executed the same; and no Capias shall be served at any Time within Two Days before the Return thereof.

That if the same shall not have been served Six Days before the Return, the Justice shall, on the Application of either Party, appoint a further Day for hearing the Cause, Notice whereof shall be given to the other Party, at least Six Days before the Day so appointed for the hearing; Provided that if the Defendant shall be in actual Custody and unable to find Bail, the Justice shall not postpone the Cause, without the Consent of the Defendant, unless the Plaintiff will agree to his Release from such actual Confinement.

That if any Summons or Capias be returned not served, it may from Time to Time be renewed by the Justice, who shall upon the Application of the Plaintiff issue an Alias or Pluries Summons or Capias; Provided that no more than one Pluries Writ shall be issued or allowed for in the Taxation of Costs.

That any Plaintiff or Defendant in a Suit before a Justice may appear and conduct his Suit either in Person, or by Attorney or Agent.

That the Authority of any Agent or Attorney may be either written or oral, but no such Agent or Attorney shall be allowed to advocate or take any Part whatever in the Conduct of the Proceedings, if objected to by the opposite Party, (except when he appears on behalf of a Defendant then in actual Custody at the Suit of the Plaintiff and unable to appear himself,) unless he make Oath that he has not directly or indirectly received any Fee, Hire or Reward for his Services as such Attorney or Agent, that he has not any Expectation of receiving, and that he will not accept or receive, any Pay, Remuneration, or Gratuity, for his Attendance or Services already rendered or to be rendered to the Party in the Conduct of the Suit.

That the Defendant upon Appearance may without any written or formal Plea, defend the Suit, and resist the Plaintiff's Right of Action.

That in any Action brought for the Recovery of a Debt, the Defendant may set off any Debt or Sum which may be owing to him by the Plaintiff; Provided that the same is due to the Defendant in his

own Right, either as being the original Creditor or Payee, or as being the Assignee of a Demand legally assignable, and was so due at the Time of the Commencement of the Suit; and if the Set Off be founded on a Bond or other Instrument having a Penalty, the Sum really and justly due by Virtue of its Condition only shall be setoff: Provided also, that if there be several Defendants the Demand set off must be due to them all jointly.

That if the Amount of the Set Off duly established be equal to the Plaintiff's Debt, Judgment shall be entered for the Defendant with Costs; if it be less than the Plaintiff's Debt, the Plaintiff shall have Judgment for the Residue only with Costs; if it be more than the Plaintiff's Debt, and the whole Amount of such Set Off do not exceed Five Pounds, Judgment shall be rendered for the Defendant for the Excess or Balance with Costs.

That if the Amount of the Defendant's Set Off proved, exceed Five Pounds, the Justice shall, if required by the Defendant, set off the same against the Plaintiffs Demand, and shall render Judgment for the Defendant for his Costs; in which Case no other Action shall be brought by the Defendant for the Subject Matter of such Set Off; but if the Defendant shall not require this, the Justice shall enter Judgment of Won Suit for the Defendant with Costs; and the Defendant may thereafter sue for and recover his Demand, in any Court having Cognizance thereof, in which Action, the Plaintiff may set off the Demand so sued for in the Justice's Court.

That if upon the Trial of a Cause, it shall appear that the Amount of the Plaintiff's Claim exceeds Five Pounds, Judgment shall be rendered against the Plaintiff with Costs.

That in Suits brought by Executors or Administrators, the Defendant may set off Demands existing against their Testators or Intestates, and belonging to the Defendant at the Time of their Death, in the same Manner as if the Action had been brought by and in the Name of the Deceased.

That, in like Manner, in Suits brought by Trustees of absconding Debtors, the Defendant may set off Demands existing against such Debtor and legally belonging to such Defendant at the Time of the Debtor's absconding.

That whenever a Set Off is established in a Suit brought by such Executors, Administrators or Trustees, the Judgment shall be against them in their representative Character, and shall be Evidence of a Debt established, but Execution shall not issue thereon.

That if it appear on the Trial that the Title to Lands is in Question, the Justice shall dismiss the Cause, and render Judgment for the Defendant, for his Costs.

That every Person applying to a Justice for a Summons or Capias shall, at or before the issuing of the same, file with the Justice a Statement or Particular of his Demand or Cause of Action; and the Justice shall, if required by the Plaintiff, annex a Copy of the same to the Copy of the Process to be served on the Defendant with the Process.

That every Defendant having a Set Off shall file with the Justice, or deliver to the Plaintiff, a Particular of such Set Off, at least Two Days before the Day appointed for hearing the Cause.

That the Justice shall at all reasonable Times exhibit such Particulars to the opposite Party, and if required deliver a Copy of the same, the Applicant paying to the Justice his Fee therefor.

That the Parties shall at the Trial of the Cause be confined to their respective Particulars, and shall not be allowed to go into Evidence of any Matter or Demand not contained therein.

That upon the written Application of both Plaintiff and Defendant, the Justice may proceed to the Hearing and Determination of a Cause at any Time which may be mutually agreed on, either previous or subsequent to the Day on which the Process is returnable.

That the Justice may at his Discretion, upon the Application of either Party, adjourn the hearing of the Cause, on account of the Absence of a material Witness, to some future Day, and may also at his Discretion, for a like Cause, further adjourn the same; but no Cause shall be so adjourned except it be made to appear on Affidavit, that Justice cannot be done for Want of such Witness, specifying him by Name, and that there is reasonable Ground to believe that his Attendance can be procured at the hearing, in case such Adjournment be made: Provided that when the Defendant is in actual Custody, and shall make it appear by Affidavit that he is unable to procure Bail or make Deposit, the Justice shall not adjourn the Cause, at the Instance of the Plaintiff, unless such Plaintiff shall consent to the Release of the Defendant from Confinement.

That where the Summons has been served by leaving the same at the dwelling House of the Defendant, and it shall be made to appear to the Justice upon Affidavit, that such Defendant was absent from his Dwelling House and has not since returned thereto or had Notice of such Summons, the Justice may in his Discretion adjourn the hearing of the Cause.

That no Adjournment shall in any Case be allowed, without the Agreement of both the Parties, to any Time beyond Three Calendar Months from the Return of the Process,

That any Justice of the Peace, may issue Subpoenas to compel the Attendance of Witnesses to give Evidence on any Trial depending before himself or any other Justice: and such Subpoena shall be valid to compel the Attendance of a Witness being in the same County where the Cause is to be tried, or in an adjoining County.

That a subpoena may be served either by a Constable or any other Person, and it shall be served by shewing the same, and delivering a Copy or Memorandum thereof to the Witness, and by paying or tendering the Fees allowed by Law, if demanded at the Time by the Witness.

That every Person subpoenaed as a Witness, and neglecting or refusing to appear or testify, shall be liable to the Party in whose Behalf he shall have been subpoenaed, for all Damages which such Party shall sustain by reason of such Nonappearance or Refusal.

That every Justice of the Peace holding a Court for the Trial of Causes shall keep a Book, in which he shall fairly enter all Causes tried before him, whether with or without a Jury, or in which Judgment shall be given by him by Default or otherwise.

That every Cause shall be heard and determined at the Return of the Process, if duly served, or on some other Day which may be appointed for that Purpose according to the foregoing Provisions, before the Justice who issued such Process, or in Case of his Sickness or Inability to attend, or in Case of his being a necessary Witness for either Party, before some other Justice of the Peace for the same County, and resident either in the Parish where the Court sits or where the Defendant may have been found, who at the Request of the Justice who issued the Process may attend for that Purpose, and the Justice (unless a Jury shall have been duly demanded) shall proceed to hear the Proofs and Allegations of the Parties, and to determine the same as the very Right of the Case may appear.

That in Cases where the Cause shall be heard and determined, and Judgment given by any Justice attending in the Place of another Justice, as provided for in the foregoing Section, the Cause shall be entered in the Book of the Justice by whom the Judgment shall be given, and shall be considered as transferred to the Court before him, and Execution shall be awarded by, and all other incidental Proceedings had before him, in the same Manner as if the First Process had been issued by such Justice.

That if the Defendant do not appear to make a Defence, the Justice shall proceed to assess the Debt or Damages as to him shall appear just, and may make such Assessment upon any Bond, Bill, Note or other written Security for the Payment of any Sum certain, without further Evidence; and such Security shall be marked by the Justice, and remain on File in his Possession; he may also assess the Debt or Damages on the viva Voce Examination or the Affidavit of the Plaintiff or any other Person; which Affidavit may be made before the said Justice or any other Justice of the Peace, or any Person authorized to take Affidavits to be read in the Supreme Court; and in Actions for the Recovery of any Debt where the Particulars have been filed with the Justice, and a Copy thereof served on the Defendant with the Process, the Justice may make the Assessment upon the Proof of the Service of such Copy, without further Evidence.

That on the Application either of the Plaintiff or Defendant, Two days at least before the Day of Trial, the Justice shall issue a Venire to any Constable of the Parish, disinterested between the Parties, commanding him to summon Three Persons duly qualified to sit as Jurors in Courts of Record, and who shall be in no Wise of Kin to either Party, to make a Jury for the Trial of the Action, who being duly sworn shall try the Cause and give their Verdict, and the Verdict so given shall be conclusive, and Judgment rendered accordingly; and if there be Application for Juries in several Causes to be heard on the same Day, the Justice may issue One Venire for all or any of the Causes, stating therein the Names of the Parties in such Causes.

That the Justice shall allow all legal Challenges of Jurors; and if a sufficient Number of competent Jurors shall not attend, the Justice, in order to supply the Deficiency, may direct the Constable to

summon some of the Bye Standers or other Persons who may be competent, and against whom no Cause of Challenge shall appear, to act as Jurors in the Cause.

That the Constable to whom any Venire shall be delivered, shall execute the same fairly and impartially, and shall not summon any Person whom he has reason to believe biased or prejudiced for or against either of the Parties; he shall summon the Jurors personally, and shall put the Names on the Back of the Venire or in a Schedule thereunto annexed, which shall be returned to the Justice.

That if the Constable to whom the Venire shall have been delivered, do not return the same as thereby required, or if a full Jury of three Persons shall not be obtained in the Manner above declared, the Justice may issue a new Venire returnable immediately or at some future Day to be by him appointed, to which the Trial shall be adjourned.

That after the Jury shall have been duly sworn, they shall sit together and hear the Proofs and Allegations of the Parties which shall be delivered publicly in the Court.

That no ex Parte Affidavit of any Person shall be allowed or given in Evidence, nor shall either of the Parties testify, unless both Parties agree to allow the same.

That every Person offered as a Witness, before any Testimony be given by him, shall be duly sworn or affirmed, and may, if required by either Party, be First sworn or affirmed and examined as to his Interest in the Cause.

That after hearing the Proofs and Allegations, the Jury shall be kept together in some convenient Place, under the Charge of a Constable duly sworn, or some other fit Person to be specially appointed by the Justice and duly sworn, until they all agree upon the Verdict, and when they shall have agreed thereupon they shall deliver the same publicly to the Justice, who shall enter it in his Book.

That whenever a Justice shall be satisfied that a Jury sworn in any Cause before him, cannot agree on their Verdict, after having been out a reasonable Time, not less than Six Hours, he may discharge them, and shall issue a new Venire returnable at some future Day to be by him appointed, unless both Parties shall unite in an Application to the Justice to render Judgment on the Evidence already before him, which in such Case he may do: Provided that the Justice may, with the Consent of both Parties, discharge the Jury at any Time before the Expiration of Six Hours and proceed as above mentioned.

That every Person who shall be duly summoned as a Juror and shall not appear nor render a reasonable Excuse for his Default, or appearing shall refuse to serve, shall be liable to forfeit and pay Five Shillings to the Use of the Poor of the Parish wherein he shall be resident, to be sued for, recovered and levied with Costs, before the said Justice, in the Name of any One or more of the Overseers of the Poor for such Parish, in the same Manner as if the said Sum were a Debt due and owing to such Overseer.

That Judgment of Nonsuit with Costs shall be rendered against a Plaintiff prosecuting a Suit before a Justice of the Peace in the following Cases, if applied for by the Defendant;

First. If he discontinue or withdraw his Action without the Consent of the Defendant;

Secondly. If he fail to appear by himself, his Agent or Attorney, at the Return of the Process, or other Time appointed for hearing the Cause, and the Defendant be in Attendance and move for such Judgment;

Thirdly. If he become nonsuited on the Trial.

That Judgment for the Defendant with Costs shall be rendered whenever a Trial has been had, if it be found by Verdict of the Jury, or by the Decision of the Justice, as the Case may be, that the Plaintiff has no Cause of Action against the Defendant,

That if upon Trial of the Cause, or upon an ex Parte hearing in those Cases where it may be had on the Defendant's failing to appear, a Sum in Debt or Damages shall be found in Favor of the Plaintiff, the Judgment shall be rendered against the Defendant for such Debt or Damages and the Costs.

That if Process shall have issued against Two or more Persons jointly indebted, and shall have been personally served upon either of the Defendants, the Defendant who may have been served with Process shall answer to the Plaintiff, and the Judgment in such Case, if rendered in Favor of the Plaintiff, shall be against all the Defendants, in the same Manner as if all had been served with Process, and Execution may issue against all the Defendants, but shall not be executed on the separate Property or the Body of any Defendant, who shall not have been served with Process, unless such Defendant shall have appeared at the Trial and defended the Suit; and in such Cases the Justice shall endorse on the Execution a special Memorandum to direct the Constable as to the Service of the same.

That upon any Judgment being rendered before a Justice, he shall at the Instance of the successful Party issue Execution, but no Execution shall be issued by a Justice after the Expiration of One Year from the Time of rendering Judgment.

That the Execution shall be directed to any Constable within the Parish where the Defendant resides or may be found, and such Execution may issue and be served in any Parish within the County.

That every Execution issued by a Justice shall be dated on the Day when it is actually issued, and shall be returnable in Thirty Days from the Dale thereof, unless a longer Time shall be requested by the Party in whose Behalf the same is issued, when the Return may be extended to any Time not exceeding Three months from the Date; and such Execution shall command the Constable to levy on the Goods and Chattels, excepting such as are by Law exempt from Execution, and bring the

Money at a certain Time and Place therein to be mentioned before such Justice, to render to the Party who recovered the same; and if the Execution be issued against a male Person not having the Privilege of the General Assembly, it shall further command the Constable, if sufficient Goods or Chattels cannot be found to satisfy such Execution, to take the Body and convey the same to the common Gaol of the County, there to remain until such Execution shall be satisfied, or the Defendant discharged by due Course of Law.

That if an Execution be returned unsatisfied in Whole or in Part, a further Execution for the Amount remaining due thereon may be issued.

That the Constable to whom any Execution shall be delivered, shall proceed forthwith to levy the same, and unless the Debt or Damages and Costs be paid, shall take sufficient Goods and Chattels of the Party against whom the same is directed to satisfy the same, and shall advertize the same in Two or more public Places in the Parish for Sale by public Auction, and such Advertisement shall describe the Goods and Chattels taken, and shall be put up at least Five Days before the Time appointed for the Sale.

That at the Time and Place so appointed, if the Amount remain unpaid, the Constable shall expose the Goods to Sale at Auction to the highest Bidder; he shall forthwith return the Execution and pay the Debt or Damages and Costs levied to the Justice who issued the same, returning the Overplus, if any, to the Person against whom the Execution issued; if the Goods shall remain unsold for Want of Buyers, the Constable may adjourn the Time of Sale for any Period not less than Twenty four Hours or more than Six Days, and may in such Case proceed to sell the same after the Return Day of the Execution, but shall immediately after such Sale make Return and Payment as above specified, and whatever Goods remain unsold after the Execution is fully satisfied shall be restored to the Party from whom the same were taken.

That no Constable shall directly or indirectly purchase any Goods or Chattels at any Sale made by him upon Execution, but every such Purchase shall be absolutely void.

That for Want of Goods and Chattels whereon to levy, the Constable shall in the Cases authorized by Law (unless otherwise directed by the Party in whose Favor such Execution shall issue) take the Body of the Person against whom the Execution is directed, and convey him to the common Gaol of the County or City and County, the Keeper whereof shall keep such Person in safe Custody until the Debt or Damages and Costs shall be paid, or he is thence discharged by due Course of Law; and the Constable so conveying any such Person shall exhibit to the Keeper of such Gaol, the Execution by virtue of which the Commitment is made, and the Gaoler shall thereupon enter the Particulars of such Execution in his Register.

That no Person so committed to Gaol shall be liable to be detained more than One Day for every Two Shillings of the Debt or Damages and Costs required by such Execution to be levied, or more than fifty Days in the Whole, if the Amount exceed Five Pounds; and every Person so committed shall be entitled to his Discharge at the Expiration of such Time.

That notwithstanding the Discharge of the Defendant under the preceding Section, the Judgment upon which such Execution issued shall remain good against the Property of the Defendant, and a new Execution may be issued against his Property in like Manner as if he had not been imprisoned.

That no Female shall be arrested or imprisoned upon any Execution issued from a Justice's Court. That if a Constable neglect to return an Execution within Ten Days after the Return thereof, except with the written Consent of the Party in whose Favor the same was issued, or neglect to pay over the Money received or levied thereon, for the Space of Five Days after he shall have received the same, such Party may maintain an Action of Debt against such Constable, and shall recover therein the Amount of the Execution with Interest from the Time of the issuing such Execution, and a Justice of the Peace shall have Jurisdiction of such Action, though the Amount of the Execution with Costs exceed Five Pounds.

That upon the Return of an Execution, duly issued according to the foregoing Regulations, against any Person who may have given Bail to a Suit in a Justice's Court, stating that sufficient Goods and Chattels of the Defendant could not be found, whereon to levy the Amount, and that the Body of the said Defendant could not be found, the Plaintiff may maintain an Action of Debt against such Bail jointly or severally, and shall recover therein the Amount of Debt or Damages together with the Costs in the original Suit, and such Judgment against the Bail shall be also rendered with Costs: Provided, nevertheless, that when the Amount, of Debt or Damages exceed the Sum for which the said Defendant was arrested, the Bail shall only be liable to the Extent of that Sum and the Costs. That a Justice of the Peace shall have Jurisdiction of such Actions against Bail, notwithstanding the Judgment, against the Defendant may, together with Costs, exceed Five pounds.

That in any Action or Suit brought in any other Court than the said Justice's Court for any Debt, if the Plaintiff do not recover more than Five Pounds, he shall not be entitled to any Costs whatever, unless he obtain an Order of the Court or of the Judge before whom the Cause was tried, for entering up Judgment for Costs, upon the Ground of the Demand having been reduced by Set Off, or upon reasonable Cause shewn to such Court or Judge for bringing the Action in such other Court; and in case of any such Action or Suit being brought in the Supreme Court, and the Plaintiff recovering a less Sum than Five Pounds, if the Judge before whom the Cause shall be tried shall think fit to certify that there was no reasonable Cause for the Plaintiff bringing such Action in that Court, the Defendant shall be entitled to Costs, to be recovered by Process of Attachment, but no such Attachment shall be awarded for more than the Overplus in which such Costs may exceed the Amount of the Debt or Damages recovered by the Plaintiff in such Suit; and such Costs or so much thereof as will be sufficient to cover the same, shall go in Satisfaction of such Judgment. That in all Cases of Judgment rendered before a Justice of the Peace in civil Actions, either Party thinking himself aggrieved by such Judgment may apply to a Judge of the Supreme Court for an Order to remove the same for Reviewal.

That the Party intending to apply for such Order shall make or cause to be made an Affidavit, setting forth the Substance of the Testimony and Proceedings before the Justice of the Peace, and

the Grounds upon which an Allegation of Error is founded; which Affidavit shall be sworn before any Person authorized to take Affidavits to be read in the Supreme Court.

That such Affidavit shall, within Thirty Days after rendering such Judgment, be presented to a Judge of the Supreme Court, and if it shall thereupon appear to such Judge, that any Error has been committed by the Justice of the Peace or Jury, in the Proceedings, Verdict, or Judgment, by means whereof substantial Justice has not been done, or that the Justice had not Jurisdiction in the Cause, he shall grant his Order for Removal of the Cause before such Judge, at such Day and Place as he shall appoint, or before the Supreme Court at the next ensuing Term, if the Judge shall so direct: provided always, that such Judge may in his Discretion, before granting such Order, require the Party applying to execute a Bond to the opposite Party, with or without Sureties, and in such penal Sum as the Judge may direct, conditioned for the Payment of all Damages, Costs and Expenses, which may be awarded by the said Supreme Court or any One of the Judges thereof; which Bond shall remain with the said Judge, and shall not be put in Force without the Order of the Supreme Court, or of a Judge thereof.

That the Order for Removal shall, within Twenty Days after the same shall have been granted, be served upon the Justice by whom the Judgment was rendered, together with a Copy of the Affidavit upon which the same was allowed, and the Sum of Five Shillings shall be paid to the Justice for his Fees for making a Return to the Order, and no Order shall be of any Effect, unless these Requisites shall have been complied with.

That if the Order and Affidavit shall be served on the Justice before Execution shall have issued, it shall stay the issuing of Execution; and if the Execution shall have been issued and not collected, the Justice shall grant the Party requiring it a Certificate of the issuing of such Order, which, on being served on the Constable in whose Hands the Execution may be, shall suspend such Execution.

That the Justice before the Return Day of such Order, or within Fourteen Days after Service thereof, shall make Return thereto in Writing, in which Return he shall truly and fully answer to all the Facts set forth in the Affidavit, on which the Order was made; and such Justice shall forthwith make and transmit his Return to the Judge, pursuant to the Order, or deliver the same, if required, to the Attorney of the Party at whose Instance the same was granted, for the Purpose of being forthwith transmitted to the said Judge.

That the Supreme Court or any Judge thereof shall have Power to compel such Justice to make or amend such Return by Rule or Order, and by Attachment, if necessary.

That upon the Return to such Order being made, the Judge shall appoint a Day and Place for hearing the Matter, which may from Time to Time be adjourned as he may think fit; and Notice thereof shall be given to the opposite Party, by Service on the Person or at the Dwelling House, or by Order of the said Judge in Presence of the Party or his Attorney, and the Judge shall proceed to hear the Parties, their Counsel or Attornies, and may receive any Affidavit, on either Side, explanatory of the Proceedings before the said Justice, and shall give Judgment in the Cause as the

very Right of the Matter may appear, without regarding technical Omissions, Imperfections or Defects in the Proceedings before the Justice, which do not affect the substantial Justice of the Case, and may affirm, reverse or alter the Judgment, either as to Debt, Damages or Costs, in Whole or in Part, and may, if necessary, remit the Cause to the Justice of the Peace, for the Purpose of Execution being issued for the Amount awarded to either Party on such Review of the Proceedings, or may direct the Payment of such Money to be enforced by Attachment: Provided always, that the Judge by whom such Order may have been granted, may, at any Time before his final Determination of the Matter, adjourn the same for hearing before the Supreme Court at the next ensuing or any subsequent Term thereof, and in that Case the Cause may be brought on for Argument before the said Court, and Judgment shall be rendered by the Court in the same Manner, and to the like Effect as if heard and determined before a single Judge; and the Court may remit the same to the Justice of the Peace or enforce the Payment thereof in the same Manner as before provided in the Case of a Determination before a single Judge: Provided always, that in case of the Sickness or Absence of the Judge by whom any Order may have been so granted, the Matter may be heard before any other Judge of the Supreme Court, who shall thereupon be vested with the same Power and Authority in the Premises, as if the said Order had been allowed by him.

That if the Judgment be wholly affirmed or reversed, Costs shall be awarded to the successful Party; that if the Judgment be affirmed in Part, or altered, Costs may be awarded, according to the Discretion of the Court or Judge; the Costs in all Cases before a Judge to be taxed and allowed by such Judge, and in all Cases before the Court to be taxed and allowed by any of the Judges or the Clerk, as usual in other Causes, and to be recovered by Process of Attachment.

That a Copy of the Minute of the Judgment of the Supreme Court or of a Judge thereof, upon such Reviewal of any Judgment of a Justice's Court, certified under the Hand of a Judge by whom such Judgment may be given, or of the Clerk of the Court, if given by the Court, shall in all Courts be Evidence of the Judgment of such Supreme Court or Judge; and a Copy of any Rule or Order of such Court or Judge made in any of the Proceedings herein provided for, certified in like Manner, shall in all Courts be Evidence of such Rule or Order.

That the Decision of any Judge of the Supreme Court, or of the Court, upon such Revision of the Proceedings before a Justice of the Peace, shall be final and conclusive.

That no Certiorari or other Process to remove any Judgment or Proceeding had before a Justice of the Peace in a civil Suit, under the Provisions herein contained, shall be issued or allowed by the Supreme Court or any Judge thereof or any Order made for Removal of the same, except in the Manner and under the Regulations herein before provided.

That the Plaintiff shall not be entitled to recover, or the Defendant to set off any Debt of Demand barred by the Statute of Limitations, in any Action before a Justice of the Peace, if the Benefit of the Statute be claimed at the Trial; neither shall the Plaintiff be entitled to recover in any Action of Trespass or other Action before a Justice, where the Action is barred by the said Statute, if the Defendant claim the Benefit of such Statute at the Trial.

That in any Action before a Justice of the Peace for the Recovery of a Debt, the Defendant may at any Time, while the Suit is pending, pay into the Hands of the Justice such Sum of Money as he may think fit on Account of the Plaintiff's Demand, together with the Plaintiff's Costs then incurred, an Entry of which Payment shall be made in the Justice's Book; and if the Plaintiff, after Notice of such Payment, shall take further Proceedings, and shall not recover more in the Action for his Debt than the Amount so paid on that Account to the Justice, and his Demand shall not have been reduced below that Amount by any Set Off, Judgment shall be awarded for the Defendant with Costs.

That a Defendant shall not be entitled to the Benefit of any Tender made before Action brought, unless he do pay the Sum so tendered into the Justice's Hands, at least Two Days before the Day appointed for the Trial or Hearing; neither shall such Tender be available in his Defence, if the Plaintiff make it appear that any Time after such Tender, and before Action brought, the Sum tendered was demanded by him from the Defendant and refused.

That where Money is so paid into a Justice's Hands pending a Suit as provided for in either of the Two next preceding Sections, the Plaintiff shall be entitled to receive the same upon Application therefor to the Justice, who shall make an Entry in his Book of such Application.

That if any Person upon Examination on Oath or Affirmation at the Trial or hearing of any Cause before a Justice of the Peace, shall wilfully and corruptly give false Evidence, or shall in any Deposition or Affidavit taken in Writing before any Justice of the Peace, or Person authorized to take Affidavits to be read in the Supreme Court, in any Manner relating to the Proceedings in any Cause before a Justice of the Peace, or on the Removal or Review thereof, wilfully and corruptly swear or affirm any Matter or Thing which shall be false or untrue, every such Person so offending and being thereof lawfully convicted, shall be subject to the like Pains and Penalties as any Persons convicted of wilful and corrupt Perjury are by Law liable and subject unto.

That every Process issued by any Justice of the Peace shall be signed by him, and that no Blank Process shall be delivered out by any Justice to any Person to be filled up and issued.

That if any Money shall have been paid to a Justice of the Peace upon Execution or otherwise, in Satisfaction of the Debt or Damages recoverable in any civil Suit prosecuted before him in his official Capacity, and he shall have neglected or refused, after Demand, to pay over the same to the Party entitled thereunto, such Neglect or Refusal shall be deemed a Misdemeanor and be punishable as such, or the Party entitled to such Money, his Executors or Administrators, may maintain an Action in the Supreme Court for Recovery of the same, and in such Case the Action shall be a Bar to any criminal Prosecution for the same Offence.

That in the following Cases, and no others, a Justice of the Peace may punish, as for a criminal Contempt, Persons guilty of the following Acts:—

First. Disorderly, contemptuous or insolent Behaviour towards such Justice, while engaged in the Trial of a Cause, or in the rendering of any Judgment, or in any judicial Proceedings, which shall tend to interrupt such Proceedings or to impair the Respect due to his Authority.

Secondly. Any Breach of the Peace, Noise, or other Disturbance, tending to interrupt the official Proceedings of a Justice.

Thirdly. Resistance wilfully offered by any Person, in Presence of a Justice, to the Execution of any lawful Order or Process made or issued by him.

Fourthly. Any wilful Refusal to testify on the Part of a Witness at any Trial before a Justice. That Punishment for Contempt in the foregoing Cases may be by Fine, not exceeding Ten Shillings, or by Imprisonment in the common Gaol, not exceeding Three Days, or both, in the Discretion of the Justice; and the Justice imposing such Punishment shall make a Record thereof, stating the particular Circumstances of the Offence, and the Judgment rendered, and shall issue his Warrant for levying such Fine by Distress and Sale of the Offender's Goods and Chattels, or committing such Offender to the common Gaol, or both, as the Case may be; which Warrant shall be directed to any Constable of the County; and the Fine when levied shall be paid to the Overseers of the Poor, for the Use of the Poor of the Parish wherein such Offender resides, or wherein the Levy may be made, as the Justice shall direct.

That every Justice shall, at the reasonable Request and Cost of any Party, furnish Copies of any Proceedings had before him in a civil Suit, or permit such Party to take such Copies.

That the Proceedings in any Cause had before a Justice may be proved by producing the original Minutes of such Proceedings entered by such Justice, and the Oath of such Justice, or in Case of his Death or Absence, Proof of his Hand Writing, or they may be proved by producing Copies of such Minutes sworn to by a competent Witness as having been compared by him with the original Entries, with Proof that such Entries were in the Hand Writing of the Justice.

That every Justice shall carefully file and preserve all Affidavits and Papers delivered to him to be filed in any Cause, and upon the Death of such Justice, or his Removal from Office, the same shall be delivered to the Clerk of the Peace of the County, to be filed in his Office.

That every Justice shall keep a Docket Book or Minute of every Process, whether Mesne Process or Execution, issued by him, stating shortly the Substance of the Process, Names of the Parties, Date of Issuing and Return, Name of the Parish, and also the Name of any other Person other than a Constable, who may be specially appointed to serve such Process.

That in all Processes the Day of Service shall be considered exclusive, and the day of Appearance or Return, inclusive: and in like Manner the Number of Days allowed for any Proceeding in a Cause shall always be computed the First exclusively and the last inclusively.

That where a Deposit shall have been made with any Justice by a Defendant, in lieu of Bail, such Justice may apply the same to the Satisfaction of the Amount which may be awarded to the Plaintiff for his Debt or Damages and Costs, and shall on Demand return the Overplus, if any, to the Defendant; if such Deposit be not sufficient to satisfy the Amount recovered, the Justice shall, at the Request of the Plaintiff, issue Execution for the Balance; in case the Judgment shall be in favor of the Defendant, the whole Sum so deposited shall be returned to him on Demand.

IV. And be it enacted, That the several Provisions of an Act passed in the Forty first Year of the Reign of His late Majesty King George the Third, intituled *An Act for the rendering of Justices more safe in the Execution of their Office, and for indemnifying Constables and others acting in Obedience to their Warrant*, shall extend to the Proceedings herein contained, and to the Protection of Justices and Constables in the same Manner and to the same Extent as therein provided, as fully as if the same were hereby repeated, and the same Protection shall be afforded to Constables acting in Obedience to any Process or Warrant, hereby authorized to be issued under the Hand of any Justice, as is in and by the Sixth Section of the said Act afforded to Constables acting in Obedience to the Warrants therein mentioned.

V. And be it enacted, That the Processes and proceedings in Actions before Justices of the Peace, and on the Removal thereof, shall be according to the Forms in the Schedule to this Act annexed, or in Words to the like Effect: and that the Fees therefor shall be taxed and allowed according to the Table contained in the Schedule to this Act annexed; and no Fees whatever shall be taxed or allowed for any Proceedings in Justices' Courts or on the Removal thereof, other than such as are set down and specified in the said Table.

VI. And be it enacted, That no Process shall abate, or any Suit now pending before any Justice of the Peace, or in the City Court of the City of Saint John, under and by virtue of the Acts hereby declared to be repealed, shall be discontinued or abated by reason of such Repeal, but that all Processes, Suits and Proceedings shall be continued, determined and concluded, as if no such Repeal were made.

VII. And be it enacted, That the City Court of the City of Saint John shall be vested with the same Jurisdiction and Authority, as are by these Regulations prescribed for Courts before Justices of the Peace, and no other; but the Practice, Fees, Process, Forms and Modes of Proceeding in the said City Court, shall continue the same as now established, used and allowed, until otherwise regulated by Law.

VIII. And be it enacted, That whenever in any of the foregoing Provisions Words importing the singular Number or the masculine Gender are used, yet the said Provisions shall be understood to include several Matters as well as One Matter, and several Persons as well as One Person, and Females as well as Males, and Bodies corporate as well as Individuals, unless it be otherwise specially provided, or there be something in the Subject or Context repugnant to such Construction.

IX. And be it enacted, That this Act shall commence and take Effect on the First Day of July in the present Year.

SCHEDULE

Of Forms of Proceedings in Justices' Courts, and on the Removal thereof for Reviewal.

Number One. SUMMONS.

_____ County, ss.

To any Constable of the Parish of _____. Summon C. D. to appear before me, at my Dwelling House, in the Parish of _____, (or at my Office in the Parish of, or otherwise as the Case may be,) on _____ the _____ Day of _____, at the Hour of _____, in the _____ noon, to answer the Demand of A. B. for (state the Amount claimed in Words at Length) for (state the Nature of Action, and if a Bill of Particulars be annexed to the Copy of Summons, add according to the Particulars herewith delivered), and make Return hereof forthwith as by Law directed. Dated the _____ Day of _____ 183__.

N. M. j. p.

Summon (as before) as in the foregoing.

Summon (as often before) &c.

RETURN.

Personally served on the within named C. D. the _____ Day of _____ 183__, by me.

O. P. Constable.

Proved on Oath before me the _____ Day of _____ 18__.

N. M. j. p.

Personally served on the within named C. D. the _____ Day of _____ 183__ ; the within named E. F. was not found.

O. P. Constable.

Served on the within named C. D. by leaving a Copy at his last Place of Abode, in the Parish of _____ with his Wife, and acquainting her with the Contents.

O. P. Constable.

(or)

—With C. D, his Father, Mother, Son, Daughter, (as the Case may be) being a Person of suitable Age and Discretion, and acquainting him, (or her) with the Contents.

O. P. Constable.

—With R. S. a Clerk—

—With R. S. an Apprentice—

of the said C. D. who resides in his House and is of suitable Age and Discretion, and acquainting him with the Contents.

O. P. Constable.

Personally served on the within named C. D. ____ Day of _____ 183__ ; and served at the last Place of Abode of the within named E. F. in the Parish of _____ the same Day (or as the Case may be), by delivering a Copy to his Wife (or as the Case may be) and acquainting her with the Contents.

O. P. Constable.

N. B. Add the Attestation in all Cases where necessary.

AFFIDAVITS OF SERVICE OF SUMMONS.

A. Z. of [state Residence and Occupation of Deponent] maketh Oath that he did on the Day of _____ personally serve C. D. the Defendant in the annexed Process named, with a true Copy thereof [and at the same Time read the same to him or acquaint him with the Contents thereof.]

A. Z.

Sworn at _____ the ____ Day of _____ before _____

NOTE. If the Process was not required to be read or explained to the Defendant, the Part between the Brackets may be omitted. If a bill of Particulars be annexed to the Copy of Process, the Affidavit should be as follows:

A. Z. of &c. maketh Oath that he did on the ____ Day of _____ personally serve C. D. the Defendant in the Process named, with a true Copy thereof; annexed to which Copy was a Particular of the Plaintiff's Demand signed by _____ the Justice issuing the Process.

SERVICE AT DWELLING.

A. Z. Constable of the Parish of _____ maketh Oath that he did on the _____ Day of _____ leave at the last Place of Abode of E. F. the Defendant, a true Copy of the annexed Process with R. F. the Mother of the said E. F. (or with the Wife of the said Defendant, or with S. F. a Daughter of the Defendant of suitable Age and Discretion, or with L. M. a Clerk, or Apprentice, of the said Defendant residing in his Family, of suitable Age and Discretion,) and at the same Time acquainted her with the Contents.

Sworn at _____ the ____ Day of _____.

A. Z. Constable of the Parish of _____ maketh Oath, that he did on the ____ Day of _____ personally serve E. F. One of the Defendants in the annexed Process named, with a true Copy thereof, and did on the ____ Day of _____ leave at the last Place of Abode of S. H. the other Defendant, a true Copy of such Process, with _____ [as the Case may be,] and at the same Time acquainted him with the Contents.

NOTE. If the Summons has been served in an adjoining Parish, the Limits of which extend to a greater Distance than Thirty Miles from the Place where the Court is holden, the Affidavit should state that the Summons teas served within that Distance, and the following may be added to any

one of the above Affidavits, and that the said Summons was served within Thirty Miles of the Justice's Dwelling, [or other Place whereto the Summons is returnable, as the Case maybe.]

Number Two.

AFFIDAVIT IN ORDER TO OBTAIN A CAPIAS.

A. B. of [state the Place of Residence, Profession or Occupation of the Deponent] maketh Oath that C. D. is justly and truly indebted, to the said Deponent in [state Amount and Cause of Action, which must not be under Twenty Shillings] after giving full Credit, to the best of this Deponent's Knowledge or Belief, for all Payments and Off Sets, that the Cause of Action does not exceed Five Pounds, that he doth verily believe the said C, D. is of the full Age of Twenty one Years, and that there is Danger of losing the said Debt, if the said C. D. be not arrested or held to Bail.

A.B.

Sworn at the Parish of _____ this _____ Day of _____ 183___. Before
_____ M. N. j. p.

R. S. of [state the Place of Residence, Profession or Occupation of the Deponent]. Agent of [or Clerk and Agent of] A. B. of [state Residence and Occupation of Plaintiff] maketh Oath that C. D. is justly and truly indebted to the said A. B. [conclude as in the foregoing Form.]

Number Three.

CAPIAS, RETURN, BAIL AND DEPOSIT.

_____ County, ss.

To any Constable of the Parish of _____.

You are hereby required to take the Body of C. D. and him safely keep till he shall give good Bail to answer the Demand of A. B. for [state the Amount claimed in Words] in an Action of Debt for [as in Summons] and to notify the said Defendant that the Cause will be heard before me, at my Dwelling House in the Parish of _____ on the _____ Day of _____ at the Hour of _____ in the _____ noon. In Default of Bail being given you are required to bring the said Defendant before me, that he may be dealt with as the Law directs. Dated the _____ Day of _____ 183__.

N. M. j. p.

Oath for _____ Shillings.

N. B. When the Defendant is brought before the Justice, he will either admit him to Bail, take a Deposit, or issue a Warrant for his Commitment. If Bail are offered, they must, unless allowed by the Plaintiff, justify according to the annexed Affidavit. If Deposit is offered, the Amount to be taken is the Sum sworn to, the the Amount of Constable's Mileage and Five Shillings.

BAIL AND RETURN.

I [or We, as the Case may be] do hereby consent to become Bail for the within named C. D. in this Suit. Dated the _____ Day of _____ 183__.

R. S.

T. V.

The within Defendant was arrested and served with Copy of this Process on the _____ Day of 1834 and Bail was given for him by R. S. of [state the Name, Residence and Occupation of the Bail.]
The within Defendant was arrested and served with Copy of this Process on the _____ Day of _____ 183__.

O. P. Constable.

I do hereby consent to become Bail for the within named C. D. in this Suit.

R. S.

Entered before me this _____ Day of _____ 183__.

N. M. j. p.

The within named Defendant was brought before me, and made Deposit of the Sum of _____ Shillings this _____ Day of _____ 183__.

N. M. j. p.

Sum sworn to, £ _____

Mileage, _____

For Costs, - 5 -

£ _____

R. S. maketh Oath that he resides in the Parish of _____ in the County of _____ and follows the Business or Occupation of a _____, that he is really and bona Fide worth the Sum of [Double the Sum sworn to] over and above what will pay all his just Debts, and in addition to the necessary wearing Apparel and Bedding of himself and Family, Fuel, and Tools of Trade.

Number Four.

WARRANT OF COMMITMENT FOR WANT OF BAIL.

_____ County, ss.

To any Constable of the Parish of _____, and to the Keeper of the Common Gaol of the County of _____.

Whereas C. D. has been arrested and brought before me, on a Capias issued by me, (or by K. L. Esquire, Justice of the Peace of the said County) at the Suit of A. B. upon Oath for the Sum of _____ Shillings, and is unable to give Bail or make Deposit; these are to authorize and require you the said Constable to convey the said Defendant to the said Gaol and deliver his Body to the said Keeper together with this Warrant, and you the said Keeper to receive the Body of the said Defendant, and him safely keep for _____ Days, unless sooner discharged by due Course of Law.

Given under my Hand at the Parish of _____ the _____ Day of
_____ 183__.

N. M. j. p.

Number Five.
APPOINTMENT OF NEXT FRIEND FOR A MINOR.

At the Request of A. B. who is under the Age of Twenty one Years, S. L. of [state Residence and Occupation] is appointed his next Friend in a Suit against C. D, and hereby consents thereto. Dated the _____ Day of _____ 183__.

S. L. N.M. j. p.

Number Six.
AFFIDAVIT

To be taken if required by any Person appearing as Attorney or Agent for a Party.
In the Court before N. M. Esquire, J. P.

Between A.B. Plaintiff,
 and
 C. D. Defendant.

J. K. of [state Residence and Occupation] who appears as Attorney [or Agent] for the above named Plaintiff [or Defendant] maketh Oath and saith that he has not directly or indirectly received any Fee, Hire, or Reward or any Promise of Fee, Hire or Reward, for his Services as such Attorney [or Agent,] that he has no Expectation of receiving, and that he will not accept or receive any Pay, Remuneration, or Gratuity for his Attendance or Services already rendered, or to be rendered to the Plaintiff [or Defendant] in the Conduct of this Suit.

J. K.

Sworn before me the _____ Day of _____ 183__.

N. M. j. p.

Number Seven.
SUBPOENA.

Issued by the Justice before whom the Cause is pending.

_____ County, ss.

To E. F., J. K., G. H., L. M., S. R., T. V.

You and every of you are required to appear before me, at my Dwelling House, in the Parish of _____ on the _____ Day of _____ at the Hour of _____ in the _____ noon, to give Evidence on the Part of the _____ in a Suit now pending between A. B. Plaintiff, and C. D. Defendant, and then and there to be tried, [if duces tecum, add here and you the said E. F. are required to bring and produce at the Trial a certain Promissory Note, describe the

Paper, Book, or whatever it may be,] and take Notice that in case you neglect to appear and testify, you will be liable to the said _____ for any Damage he may sustain by Reason of such Neglect. Dated the _____ Day of _____ 183__.

N. M. J. p.

TICKET OF MEMORANDUM OF SUBPCENA.

Between A. B. Plaintiff,
 and
 C. D. Defendant.

E. F. is required to give Evidence in this Suit on the Part of the _____, before me at my Dwelling House in the Parish of _____ on the _____ Day of _____ at _____ o'Clock in the _____ noon.

N. M. j. p.

To E. F. and G. H.

Whereas there is a Suit pending between A.B., Plaintiff, and C. D., Defendant, and to be tried before N. M. Esquire, One of His Majesty's Justices of the Peace for the County of _____ at his Dwelling House, in the Parish of _____ on the _____ Day of _____ at _____ o'Clock in the _____ noon, you and each of you are hereby required to appear and give Evidence in the said Suit, at the Time and Place aforesaid, on the Part of the [if a duces tecum, add here and you the said E. F. &c. as before] and take Notice, that if you neglect to appear and testify, you will be liable to the said _____ for all Damages he may sustain by Reason of such Neglect. Dated the _____ Day of _____ 183__.

Y. Z.

Justice of the Peace for the County of _____.

Between A. B. Plaintiff,
 and
 C. D. Defendant.

E. F. is required to give Evidence in this Suit, on the Part of the _____ before N. M. Esquire, Justice of the Peace, at his Dwelling House, in the Parish of _____ on the _____ Day of _____ at _____ of the Clock in the _____ noon.

Y. Z. j. p.

Number Eight.
VENIRE AND RETURN.

_____ County, ss.
To any Constable of the Parish of _____.

You are hereby required to summon Three Persons duly qualified to sit as Jurors, and who are not of kin to either of the Parties, to come before me, at my Dwelling House, in the Parish of _____ on the _____ Day of _____ at _____ of the Clock in the _____ noon, to make a Jury between A. B. Plaintiff, and C. D. Defendant. Dated the _____ Day of _____ 183__.

N. M. j. p.

I have summoned the following Persons as Jurors for the Trial of the within cause, G. H. J. K. and. L. M.

O. P. Constable.

Number Nine.
FORMS OF OATHS.

You shall truly say whether you have an Interest, or can gain or lose by the Event of this Trial, and shall true Answer make to all such Questions as shall be asked of you touching your Interest in this Cause.

So help you God!

The Evidence you shall give to the Court (or to the Court, and Jury sworn, as the Case may be) touching the Matter in Question shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God!

You shall well and truly try this Cause between A. B. Plaintiff, and C. D. Defendant, and a true Verdict give according to the Evidence.

So help you God!

You shall keep every One of this Jury sworn, in some convenient Place without Meat or Drink, you shall not suffer any Person to speak to them or either of them, neither shall you speak to them yourself, except it be to ask if they are agreed on their Verdict, without Leave of the Court.

So help you God!

Number Ten.
EXECUTION AND RETURN.

_____ County, ss.

To any Constable of the Parish of _____.

You are hereby required to levy of the Goods and Chattels of C.D. within your Parish _____ Shillings which A. B. recovered against him in the Court before me for

_____ and also _____ Costs, amounting in the Whole to _____ besides the Costs of levying this Execution, and have the Money before me at my dwelling House, on the _____ Day of _____ to be rendered to the said A.B. For want of Goods and Chattels whereon to levy, you will take the Body of the said C. D. and deliver him to the Keeper of the Gaol of the said County; and the said Keeper will take the said C. D. into his Custody, and him safely keep for _____ Days, unless the said _____ and Costs be sooner paid; and how you shall have executed this Precept make Return to me at thee Day and Place aforesaid. Given under my Hand this _____ Day of _____ 183__.

N. M.

Justice of the Peace for the County of _____.

NOTE. If the Execution be against Two or more, and all have not been served with Process, or appeared, the Execution will only be against the Body of him who was served or appeared. The Justice must insert the Number of Days of Imprisonment, being One Day for every Two Shillings due on the Judgment: If Part of the Money have been levied, a Memorandum shall be endorsed on the Execution stating the Balance due and Days of Imprisonment thus:

Balance due, Thirteen Shillings.

Days of Imprisonment, Six.

_____ County, ss.

To any Constable of the Parish of _____.

You are hereby required to levy of the Goods and Chattels of C. D. within your Parish which A. B. recovered against _____ in the Court before me for Debt, (or Damages,) and also Costs, amounting in the Whole to _____ besides the Costs of levying this Execution, and have the Money before me at my dwelling House on the _____ Day of _____ to be rendered to the said A.B. and have there then this Precept. Given under my Hand the _____ Day of _____ 183__.

N. M.

Justice of the Peace for the County of _____.

The Return of the within Execution is enlarged to the ____ Day of _____ Dated _____ Day of _____ 183__.

N. M. J. P.

I have levied the Damages and Costs as within directed.

O. P. Constable.

For Want of Goods and Chattels whereon to levy, I have taken the Body of the within named C. D. and delivered him to the Keeper of the Gaol, within directed.

O. P. Constable.

I could not find any Goods or the Body of the said C. D.

O. P. Constable.

The separate Property of the within E. F. is not to be levied on.

Number Eleven.
SUMMONS AGAINST CONSTABLE.

For not returning Execution, or not paying over Money levied.

_____ County, ss.
To any Constable of the Parish of _____.
Whereas on the _____ Day of _____, an Execution for _____ Damages and
_____ Costs on a Judgment recovered by A. B. against C. D. before me, was delivered to O.
P. One of the Constables of the said Parish of _____ returnable on the _____ Day of
_____: And whereas the said O. P. has [not made Return of the said Execution,] as by Law
directed, You are hereby required to summon the said O. P. to appear before me at my dwelling
House in the said Parish on the _____ Day of _____ at _____ of the Clock in
the _____ noon to answer to the said A. B. for the said Damages and Costs with Interest.
And make Return hereof forthwith according to Law.
Dated the _____ Day of _____ 183__.

N. M. j. r.

NOTE. If the Suit is for not having paid over the Money, omit the Words between Brackets, and say
levied and not paid over the Money.

Number Twelve.
SUMMONS AGAINST BAIL.

_____ County ss.
To any Constable of the Parish of _____.
You are hereby required to summon R. S. to appear before me, at my dwelling House in the
Parish of _____ on the _____ Day of _____ at _____ of the Clock on the _____
noon, to answer the Demand of A. B. for [state the Sum for which the Bail is liable, namely, the
Amount sworn, to in the original Action and Costs awarded] which the said A.B. lately recovered in
the Court before me against C.D. and for which Sum the said R. S. is liable as Bail for the said C. D.
as is alleged; and make Return hereof forthwith as by Law directed. Dated the _____ Day of
_____ 183__.

N. M. j. p.

Number Thirteen.
FORMS OF PROCEEDING ON REVIEW.

To N. M. Esquire, One of His Majesty's Justices of the Peace within the County of _____.
Whereas C. D. hath made it appear unto me the Honorable W. C. Esquire, one of the Justices of
the Supreme Court for the Province of New Brunswick, that in a Cause lately pending in the Court
before you, wherein A. B. was Plaintiff and the said C. D. Defendant, substantial Justice has not
been done to the said C. D. by the Judgment rendered in the said cause, and he is desirous that the

said Judgment and Proceedings should be reviewed, I do therefore in pursuance of the Act of Assembly in such Case made and provided, hereby require you to return to me forthwith, distinctly and openly under your Hand, the Proceedings in the Cause aforesaid with all Things touching the same, in order that Right and Justice may be done in the Premises, and that you do answer the Allegations in the Affidavit of the said C. D. contained. Dated the _____ Day of _____ in the Year of our Lord _____ and in the _____ Year of His Majesty's Reign, Whereas C. D. hath made it appear unto me, the Honorable W, B. Esquire, One &c. that he was lately impleaded by A. B. in a Cause before you, for a Matter not within your Jurisdiction as such Justice, and he is desirous &c. [as in the foregoing.]

Number Fourteen.

Know all Men by these Presents &c. [Common Form.]
Whereas upon the Application of the above bounden C. D. an Order has been made by the Honorable W. C. One of the Justices of His Majesty's Supreme Court for the Province of New Brunswick, for Removal before the said Justice (or before the said Court) of the Proceedings had in a Cause lately pending before N. M. Esquire, One of His Majesty's Justices of the Peace for the County of _____ wherein the above named A. B. was Plaintiff, and the said C. D. Defendant: Now the Condition of the above Obligation is such, that if the said C. D. shall well and truly pay or cause to be paid unto the said A. B. all Damages, Costs and Expenses which shall be awarded to the said A. B. by the said Supreme Court or any One of the Judges thereof, then the above Obligation to be void, otherwise to stand and remain in full Force.

Number Fifteen.

In the Court before N. M. Esquire, J. P.

Between A. B. Plaintiff,
 and
 A.D. Defendant.

On Judgment for £ _____
Damages and Costs _____

The Constable to whom the Execution in this Cause was delivered, is hereby required to suspend further Proceedings on the same, and return the said Execution to me.

Dated the _____ Day of _____ 183__.

N. M. J. P.

Number Sixteen.

WARRANT TO LEVY A FINE FOR CONTEMPT.

_____ County, ss.

To any Constable of the Parish of _____.

Whereas X. Y. has been guilty of insolent Behaviour towards me, in the Trial of a Cause between A. B. Plaintiff and C. D. Defendant, tending to interrupt the Proceedings in the said Cause, and was

thereupon adjudged to pay a Fine of Shillings for such Contempt, to the Uses hereinafter mentioned: You are hereby required forthwith to distrain the Goods and Chattels of the said X. Y. for satisfying the said Sum of _____ Shillings, and in case the said Sum should not be paid within Six Days next after the making of the said Distress, that you cause the said Goods and Chattels to be appraised and sold, and out of the Money arising from such Sale, you pay to the Overseers of the Poor of the said Parish of _____ to the Use of the said Poor, the said Sum of _____ Shillings as by Law directed, and that you render the Overplus arising from such Sale (if any be), the necessary Charges of making and selling such Distress being First deducted, to the said X. Y. and make Return hereof to me.

Given under my Hand and Seal the _____ Day of _____ 183__.

N. M. j. p.

Number Seventeen.

WARRANT OF COMMITMENT FOR CONTEMPT.

_____ County, ss.

To any Constable of the Parish of _____.

Whereas X. Y. has been guilty of insolent Behaviour towards me, in the Trial of a Cause between A. B. Plaintiff and C. D. Defendant, tending to interrupt the Proceedings in the said Cause, and was thereupon, for such Contempt, adjudged to be imprisoned _____ Days in the Common Gaol of the said County: These are therefore to require you the said Constable to take the said X. Y. and convey his Body to the Gaol of the said County, and there deliver him to the Keeper of the said Gaol together with this Warrant; and you the said Keeper are hereby required to keep in your Custody the said X. Y. for the said Term of _____ Days, and hereof fail you not.

Given under my Hand and Seal the _____ Day of _____ 183__.

N. M. j. p.

NOTE. The Justice will alter the Statement of the Offence in the foregoing Form, so as to suit the Facts of the Case, taking Care to state the Offence according to the Regulations.

Number Eighteen.

TABLE OF FEES.

To be taxed and allowed in Civil Actions before Justices of the Peace, and on the Removal thereof.

TO THE JUSTICE.

Summons,	£ 0 0 9
Each Copy of Summons,	0 0 3
Capias,	0 0 9
Each Copy of Capias,	0 0 3
Affidavits whereupon to grant Capias, and swearing,	0 1 0
Appointment of next Friend or Guardian,	0 0 6
A Subpoena,	0 0 4
Each Copy or Ticket thereof,	0 0 2

Every Adjournment made at the Instance of either Party,	0 0 6
Trial and Judgment,	0 1 3
Swearing each Witness and Constable,	0 0 3
Swearing Jury,	0 0 6
Venire,	0 0 6
Copies of Particulars and all other Papers which may be required from a Justice, per 100 words	0 0 6
Return to Judge's Order for Removal,	0 5 0
Taking Bail and Justifying,	0 1 0
Taking Deposit,	0 1 0
Execution,	0 0 9
If against joint Debtors requiring any special Endorsement,	0 1 0
Certificate to suspend Execution,	0 0 3
Judgment by Default and assessing Damages,	0 1 0
On Money paid into Court by a Defendant pending a Suit, before Trial or Judgment, Two and a half per Cent, or Sixpence in the Pound, but no per Centage to be charged for receiving Money on Deposit in lieu of Bail, or upon Execution.	
Affidavit of Service of Summons and Swearing,	0 0 6
Preparing Affidavit to be taken by Attorney or Agent, and swearing same, The same Fee to be allowed to any other requisite Affidavit not specially provided for and swearing.	0 1 0

TO THE CONSTABLE.

For serving a Summons and making a Return thereto,	0 0 6
For Serving a Capias, do. do.	0 1 0
Taking Bail if entered into before Constable,	0 0 3
Return of Non est,	0 0 3
Serving a Warrant to commit,	0 1 0
Summoning a Jury,	0 1 0
Attending at the Trial,	0 0 6
Summoning each Additional Juror if there are not sufficient Bye Standers,	0 0 3
Serving a Subpoena on each Witness,	0 1 0
Serving an Execution on the Goods, for the first Pound or less,	0 1 0
Do. do. all above One Pound for each Pound,	0 0 6
Serving an Execution on the Body,	0 1 0
If the Money is paid, for each Pound,	0 0 6
Every Mile (when the Distance is more than One Mile) going from Constable's Residence to Place of Service when serving a Summons, Capias or Execution; bringing Defendant before Justice; from Place of Service to Justice's Residence; taking Defendant to Gaol; the Constable to be allowed for all such necessary travelling both going and returning.	0 0 3

TO WITNESSES.

To every necessary Witness for each Day's Attendance,	0 1 3
Travelling if over One Mile going and returning each Mile,	0 0 3

JURORS.

Each Juror who shall be sworn in a Cause, if a Verdict be given,	0 1 0
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TO A JUDGE OF THE SUPREME COURT.

Every Application for an Order to remove Cause,	0 2 6
For every Order to remove,	0 2 6
Hearing the Cause upon Return of the Order and his Judgment thereupon,	0 10 0
Every Affidavit,	0 1 0
Taxing a Bill of Costs,	0 2 0
Every Attachment, Summons, or other Order, made in the Course of any Proceeding before him,	0 2 6

TO ATTORNEY OF THE SUPREME COURT.

Drawing every Affidavit or other Paper, per Folio of One Hundred Words,	0 1 0
Copy of the same per Folio,	0 0 6
Every Order to remove and Copy thereof,	0 6 8
Attendance on Judge for his Allowance,	0 3 4
Every other necessary Attendance,	0 3 4
Upon every Appeal heard or argued before the Judge, not less than Eleven Shillings and Eight Pence, and not exceeding two Pounds Six Shillings and Eight Pence, at the Judge's discretion.	
If Argument be heard before the Court such Fee, not exceeding Three Guineas, as may be allowed by the Court.	
Preparing Bond,	0 5 0
Every Attachment,	0 5 0
Every Notice or Summons and Service on the adverse Party,	0 2 0