

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1835. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1835.

5 William IV – Chapter 37 (Session 1)

**An Act to provide for the more convenient administration of Justice in the Supreme Court.
Passed 17th March 1835.**

Whereas the Easter Term of the Supreme Court is held at an inconvenient season, and it is considered that three Terms of the said Court in each year will, under proper regulations, be sufficient for the despatch of the business depending therein: And Whereas trials by Jury in Term time are found to be inconvenient and to delay and impede the matters pending for argument in the said Court;

I. Be it enacted by the Lieutenant Governor, Council and Assembly, That from and after the time when this Act shall commence and take effect there shall be no Easter Term in the Supreme Court in this Province; and that the Trinity Term of the said Court shall commence in the second Tuesday in June in each and every year and continue unto and include the Saturday following.

II. Provided always, And be it further enacted, That it shall and maybe lawful for the Justices of the said Court, if they shall see fit, further to continue and extend the said Trinity Term hereinbefore established unto the week next succeeding the same, in like manner and subject to the same rules and provisions in all respects as are contained in an Act made and passed in the sixtieth year of the reign of King George the Third, intituled "An Act to enable the Justices of the Supreme Court to enlarge the time of the sittings of the said Court when the same shall be expedient," with regard to the Terms of the said Court.

III. And be it further enacted; That the second Saturday after the first Tuesday in each end every Term of the said Supreme Court, shall be a day for the teste and return of all Writs in the said Court.

IV. And be it further enacted, That the Chief Justice for the time being, or any Justice of the said Supreme Court, may, at sittings to be appointed in the manner hereinafter directed, try all manner of Issues joined or to be joined in the said Court, triable by a Jury of the County of York, without any Commission being expressly made for that purpose; and it shall be lawful for any person or persons to take or sue forth writs and records of Nisi Prius for the trial of the said Issues in the said County of York, as they may do upon any Issue triable in any other County.

V. And be it further enacted, That such sittings shall be held on such days and times either before or after the respective Terms of the said Court as the Justices of the said Court by rule or order made in Term time may find it fit and expedient from time to time to direct and appoint.

VI. And be it further enacted, That the said Chief Justice and Justices of the said Supreme Court, or any one or more of them, at such sittings as aforesaid, shall and may inquire of, hear, determine

and punish all and all manner of crimes and offences committed within the said County of York, in like manner as the said Chief Justice and Justices may and have been used to do at the Terms of the said Court, without any commission or commissions of Oyer and Terminer and Gaol delivery being expressly made for that purpose.

VII. And be it further enacted, That the Sheriff of the said County of York for the time being shall make return of all writs and precepts to him directed returnable at such sittings respectively; and that the said Sheriff, and Coroner and Coroners, Bailiffs, Constables, and all officers and ministers of the Law whatever within the said County of York for the time being, and also all Jurors to be summoned, and all parties and witnesses in the causes criminal and civil to be heard and tried at such respective sittings, shall give their attendance at such respective sittings, and shall be charged and bound in such and the like manner, and upon like pains and penalties, for non-appearance and non-attendance, or for any misdemeanour or default at such sittings, as if at the Terms of the said Supreme Court.

VIII. And be it further enacted, That the Clerk of the Crown in the Supreme Court shall be Clerk of the Crown and also Nisi Prius Clerk at such sittings in the County of York, and shall be subject to all the duties and entitled to all the rights, privileges and emoluments of these offices respectively.

IX. And be it further enacted, That in all actions in the said Court in which the Court is or may be authorised by law, after Judgment by default, to inquire of the truth of any matters or to assess the damages or the amount to be recovered in the action, without the intervention of a Jury, such enquiry and assessment may be made by a Judge of the said Court in vacation; and upon the production of such assessment signed by such Judge it shall be lawful for the Clerk of the Pleas to tax the costs and to sign Judgment, whereupon execution may be issued forthwith: Provided always, that no such inquiry or assessment shall be made in vacation until the expiration of twenty days after the day on which the Judgment by default shall have been entered: Provided also, that the Defendant or Defendants in any such action may upon due application therefor have such inquiry and assessment made by a Jury, and that the Judge who may be applied to in vacation to make such inquiry and assessment shall have power to order the same to be made by a Jury in like manner as in now the law and practice in cases before the Court in banc.

X. And be it further enacted, That in any action brought in the said Supreme Court in which a Postea shall be returned either from the sittings in the County of York or from any Circuit Court in any other County, it shall be lawful for the Clerk of the Pleas, upon the production of the postea signed in the margin by the Officer who returns the postea, to enter a rule for Judgment on the postea, and to tax the Costs and sign Judgment, Whereupon Execution may be issued forthwith: Provided always, that it shall be lawful for the Judge before whom such sittings or Circuit Court shall be held, in any case where justice may appear so to require, either upon Summons or not according to the circumstances of the case, to order the returning of the Postea and the entry and signing of Judgment to be stayed until the Court shall make order in the matter at the next succeeding term: And Provided also, that no rule for Judgment on the Postea shall be entered by the Clerk of the Pleas under this Act, until the expiration of Twenty days after, the last day of the sitting of the Court from which the Postea is returned; and in order to manifest such last day of the

sitting of such Court, the Officer who returns the Postea shall set the same down in the margin of the Postea when he signs his name thereto.

XI. And be it further enacted, That every Judgment to be entered by virtue of this Act may be entered upon record as the Judgment of the Court, although the Court may not be sitting on the day of the signing and entry thereof: and every Execution issued by virtue of this Act shall and may bear date on the day of issuing thereof; and such Judgment and Execution shall be as valid and effectual as if the same had been signed, entered of record, and issued according to the course of the Common Law.

XII. Provided always, That it shall be lawful for the party entitled to any Judgment under this Act to postpone the signing thereof; and provided also, that notwithstanding any Judgment signed, and entered of record or Execution issued by virtue of this Act, it shall be lawful for the Court to order such Judgment to be vacated and Execution to be stayed or set aside, and to enter an arrest of Judgment or grant a new trial, or a new writ of enquiry or a new assessment of damages or of the amount to be recovered, as justice may appear to require; and thereupon the party effected by such writ of Execution shall be restored to all that he may have lost thereby in such manner as upon the reversal of a Judgment by Writ of Error, or otherwise as the Court may think fit to direct.

XIII. And be it further enacted, That the Judge of the Supreme Court may from time to time make and establish such rules and orders relating to the matters contained in this Act, and also touching the award and return of any Jury process for trials at Nisi Prius, the same being not repugnant to this Act, as to them may seem expedient.

XIV. And be it further enacted, That this Act shall commence and take effect on the first day of January one thousand eight hundred and thirty-six: Provided always, that the Judges of the Supreme Court may before that time make any rules and orders at the authorised by this Act, but not to go into operation before that day.