

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1837.* Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1837.

7 William IV – Chapter 5 (Session 2)

**An Act relating to Landlord and Tenant. Passed 22d July 1837.**

'Whereas the present mode of proceeding by action of ejectment in order to dispossess tenants wilfully holding over premises after the expiration of their lease is attended with great inconvenience, delay and expense, and it is considered expedient to give in certain cases a more summary and less expensive remedy;'

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That when any tenant of premises, under a lease for years or less period shall after the expiration of such tenancy, and on due notice to quit having been given, refuse to deliver up such possession to the lessor or person entitled thereto, it shall be lawful for such lessor or person to apply to two of the Justices of the Inferior Court of Common Pleas of the County or City and County within which such premises are situate, and having made oath before such Justices, that such tenant has held and occupied such premises (particularly designating in the affidavit whether a messuage or other premises, and where situate,) for a certain period then last past, as tenant to such person, under a demise which had then expired, and that due notice to quit has been given, such Justices shall and may thereupon summon such tenant, giving at least six days notice, to be served either personally on the tenant, or in case he cannot be found by leaving the same with his wife, servant or other adult member of the family on the premises, to shew cause at a time and place in such summons to be specified, before such Justices, why such tenant holds over such premises; and in case such tenant shall neglect or refuse to attend such summons, or attending shall not shew sufficient cause to the satisfaction of such Justices for so holding over, they shall issue their warrant in the nature of a writ of possession and execution, directed to the Sheriff of the County or City and County within which such premises may be situate, requiring him forthwith to put such person claiming such premises in possession, and to levy the costs of such proceedings, which execution as to costs shall be regulated and enforced by the provisions of the Act to regulate proceedings before Justices of the Peace in civil suits, and it shall be the duty of such Sheriff to execute such writ agreeably to the direction therein contained.

II. And be it enacted, That if such tenant or other person having an interest in such premises should consider himself aggrieved by the judgment of such Justices, it shall be lawful for the Supreme Court of Judicature in this Province, in term time, on the application of such tenant or other person, and upon sufficient cause shewn therefor by affidavit, to award a Certiorari for the removal of such proceedings before such Court, and upon the return of such proceedings such Court shall examine into the matter, and may admit affidavits on either side, and may in case that in the opinion of such Court may require it, direct an issue for trial of facts, and shall order and determine the matter either by confirming or quashing the proceedings as to justice shall appertain; and such Court may make such orders and rules as may be necessary to carry their

proceedings and determination into effect: Provided always that no such Certiorari shall in the mean time stay or suspend the execution of the judgment of such Justices.

III. And be it enacted, That in all proceedings had under the provisions of this Act, the party prevailing shall recover his costs and have process therefor, that is to say, for proceedings had before such Justices, the like costs to be by them taxed and allowed as are recoverable for similar services by the Act to regulate proceedings before Justices of the Peace in civil suits, except the Sheriff's fees on the execution of such writ of possession, which shall be the same as for executing a writ of *Habere facias possessionem*, issuing out of the Supreme Court, and all proceedings upon Certiorari in the Supreme Court, costs to be levied and recovered in the usual manner.

IV. And be it enacted, That when such proceedings are quashed by the Supreme Court, the said Court may award a writ of restitution, and such tenant or other person may recover against the adverse party in such proceedings any damage which such person may have sustained by reason of such proceedings with costs in an action on the case.

V. And be it enacted, That in the construction of this Act, words importing the singular number or masculine gender only, shall be understood to include several matters as well as one matter, and several persons as well as one person, and female as well as male, and bodies corporate as well as individuals.

VI. And be it enacted, That the summons and writ of possession and execution shall be in form given by the schedule to this Act annexed, or in words to this effect.

VII. And be it enacted, That this Act shall continue and be in force until the first day of April one thousand eight hundred and forty and no longer.

SCHEDULE.  
FORM OF SUMMONS.

\_\_\_\_\_ ss. To \_\_\_\_\_

Whereas \_\_\_\_\_ of \_\_\_\_\_ hath this day on oath made it appear to us \_\_\_\_\_ that you have as his tenant occupied [here describe premises] for \_\_\_\_\_ last past under a demise which has expired, and that after being duly notified to quit, you hold over and refuse to give up the possession of said premises; We do therefor, agreeably to the directions of the Act of Assembly in such case made and provided, summon you to appear before us [here describe day, hour and place ], to shew cause, if any you have, why you should not deliver up to said \_\_\_\_\_ the possession of said premises. Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_ 183\_\_\_\_\_ .

L. M.  
N. O.

FORM OF WRIT OF POSSESSION AND EXECUTION.

By A. B, and C. D. two of the Justices of the Inferior Court of Common Pleas in and for the County of \_\_\_\_\_.

To the Sheriff of \_\_\_\_\_

Whereas G. H. claiming as lessor of certain premises situate [here describe premises] now in the occupation of \_\_\_\_\_ hath on oath made it appear to us, that the said \_\_\_\_\_ holds over and refuses to give up the possession of said premises after his demise thereof has expired, and due notice to quit given, and the said \_\_\_\_\_ having been duly summoned to appear before us agreeably to the direction of the Act of Assembly in such case made and provided, to shew cause why &c., We have adjudged that the said \_\_\_\_\_ shall be forthwith put in possession of said premises, and shall also recover his costs of proceeding being besides your fees on executing this writ; and we do hereby command you, that without delay you cause the said \_\_\_\_\_ to have possession of said premises:

We also command you that you levy of the goods and chattels of said \_\_\_\_\_ the sum of \_\_\_\_\_ adjudged to him for his costs, besides your fees, and for want of goods and chattels whereon to levy, you are required to take the body of said \_\_\_\_\_ and deliver him to the keeper of the gaol of said County, and the said keeper will take the said \_\_\_\_\_ into his custody and him safely keep for \_\_\_\_\_ days, unless the said \_\_\_\_\_ and your fees be sooner paid; and how you shall have executed this writ, return to us within \_\_\_\_\_ days from the date hereof. Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_ 183\_\_\_\_.

A. B.

C. D.