

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1838.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1838.

1 Victoria – Chapter 11

**An Act in addition to and explanatory of an Act, intituled *An Act to regulate proceedings before Justices of the Peace in Civil Suits*. Passed 9th March 1838.**

Whereas in and by the third section of an Act made and passed in the fourth year of the reign of His late Majesty King William the Fourth, intituled "An Act to regulate proceedings before Justices of the Peace in Civil Suits," it is among other things enacted, 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 deponent's knowledge or belief for all payments and offsets:" And whereas it is expedient that Justices of the Peace should be authorized and empowered to issue *capiases* when the sum sworn to shall amount to ten shillings;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That from and after the passing of this Act, it shall and may be lawful for a Justice of the Peace, when proceeding under the authority and according to the provisions of the hereinbefore recited Act, upon application and affidavit, as therein directed, to issue a *capias* when the sum sworn to shall amount to ten shillings, any thing in the said Act contained to the contrary thereof in any wise notwithstanding.

II. And whereas doubts have arisen whether defendants arrested by virtue of executions issued under the provisions of the said Act, and not in close custody, but only confined within the limits of the Gaol under the authority of an Act of the General Assembly of this Province, intituled "An Act relating to insolvent confined debtors," are entitled to their discharge after a certain number of days imprisonment, in like manner as is provided by the third section of the said first recited Act, for persons actually committed in close custody; Be it therefore further enacted and declared, That nothing in the said first mentioned Act contained, with respect to the discharge of a debtor after a certain number of days imprisonment, shall extend or be construed to extend to persons having the benefit of the Gaol Limits.

III. And be it further enacted, That whenever a cause shall have been heard and determined before any Justice of the Peace, and judgment given and entered under the authority of the said first mentioned Act, in case of the absence, sickness or death of such Justice, it shall and may be lawful for any other Justice of the Peace resident in the County or Parish in which said judgment may have, been given and entered as aforesaid, at any time within three calendar months after the giving of such judgment, on view of the original entry of such judgment, and on affidavit made before him that the amount of the said judgment or some part thereof remains unsatisfied, to issue execution upon the same in like manner and subject to the same provisions, restrictions and

limitations as if the cause had been heard and determined and judgment given by such last mentioned Justice of the Peace.

IV. And be it further enacted, That in any case where a Judge of the Supreme Court may on review award costs to either party in pursuance of the said first recited Act, it shall and may be lawful for such party to sue out of the Supreme Court a Writ of attachment according to the form in the Schedule hereunto annexed or to that effect; which Writ the Clerk of the said Court shall issue upon the fiat or order of a Judge; Provided always, that no fiat or order for such Writ shall be made by any Judge of the Supreme Court until it be made to appear to his satisfaction by affidavit that such costs have been duly demanded by the party to whom the same have been awarded, or by some person duly authorized by him to demand and receive the same, or by the Attorney of such party in the proceedings of review, and that such costs have not been paid: and the party who may issue such attachment shall be entitled to demand, receive and levy the sum of ten shillings from the party against whom the attachment may issue as the costs of such attachment and of the proceedings hereinbefore directed for obtaining the same.

V. And be it further enacted, That the Sheriff or other officer by whom any such Writ of attachment shall be executed shall be entitled to, and he is hereby authorized and empowered to demand and receive from the party against whom such attachment shall issue, the like poundage and fees as in cases of execution; and that any party arrested on any such attachment shall on payment to the said Sheriff or other officer of the costs specified in such attachment, together with the costs of the attachment and the Sheriff's poundage and fees as aforesaid, be discharged from custody and arrest under such attachment; and the Sheriff or other officer shall make due return of such Writ, and pay over the money received under the same to the party at whose suit or instance the said Writ may have issued or his Attorney.

VI. And be it further enacted, That any person in custody upon a Writ of attachment issued pursuant to this Act, or the said Act of which this is an amendment, shall be entitled to the benefit of any Act or Acts of Assembly for the relief of confined debtors, in the same manner as if such person were arrested on mesne process or execution in any civil suit.

VII. And whereas by the provisions of the said first recited Act process and execution may be served by a Constable of the Parish only within which the party to be served may reside or be found: And whereas it would be more convenient if any Constable of the County were authorized to serve any such processor execution; Be it therefore enacted, That all process and execution which may be issued under the provisions of the said first recited Act may be directed in general terms to and served by any Constable of the County within which the party to be served may reside.

VIII. And be it further enacted, That the provisions of this Act, so far as the same are applicable, shall extend to the City Court of the City of Saint John, and to persons in custody under process issuing therefrom.

#### SCHEDULE.

WRIT OF ATTACHMENT.

Victoria by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, &c. To our Sheriff of \_\_\_\_\_, Greeting, We command you that you attach E. F. so that you may have his body before us at Fredericton on [a return day in the ensuing term] to answer to us for a certain trespass and contempt in not paying to C. D. the sum of \_\_\_\_\_ for costs awarded to the said C. D. by \_\_\_\_\_ Esquire, Chief Justice [or one of the Justices of our Supreme Court as the case may be] in a certain matter of review lately pending before the said Chief Justice, [or Justice,] pursuant to the Acts of Assembly in such case made and provided, and have then there this writ. Witness &c.

[To be tested in the name of the Chief Justice on the day whether in term or vacation on which the fiat or order for such writ may bear date.]

By order of the Chief Justice [or Mr. Justice \_\_\_\_\_ as the case may be.]

SHORE.

*In case the Sheriff be a party, the writ to be directed to the Coroner as in other cases.*