

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1839.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1839.

2 Victoria – Chapter 42

**An Act to amend the Law relating to Bastardy. Passed 23d March 1839.**

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That the third Section of an Act made and passed in the thirty second year of the Reign of King George the Third, intituled “ An Act to provide for the maintenance of Bastard Children,” be and the same is hereby repealed.

II. And be it enacted, That all orders of affiliation or maintenance to be made in pursuance of the said recited Act, shall be made by the Justices of the Peace in General Sessions.

III. And be it enacted, That in case any person appearing before such Court of General Sessions, charged with being the reputed father of a bastard child, likely to become chargeable to any Parish, shall traverse or deny the charge, such Court on the oath of the mother of such child, or such other testimony as may be offered to their satisfaction may adjudge such person the reputed father as aforesaid.

IV. And be it enacted, That when the child with which the woman may be pregnant likely to be chargeable as aforesaid, may not be born at the time of any person appearing before such Court charged with being the reputed father of such child, or in any case where the said Court, either for the purpose of procuring further testimony or for other reasons, shall consider it necessary to put off the consideration of the charge, or the making of an order of affiliation or maintenance until the next Court of General Sessions to be held for such County, such Court shall be at liberty so to order and direct; and thereupon the persons so charged shall forthwith enter into recognizance with one or more sufficient sureties to the satisfaction of such Court for his appearance at the next General Sessions of the Peace to be held for said County to answer the said charge, and further to be dealt with according to law; and on neglect or refusal to give such recognizance may be committed by such Court to the Common Gaol of said County.

V. And be it enacted, That when the said Court adjudge such person the reputed father of such child, they shall thereupon make their order of affiliation in which shall be specified the expenses already incurred, as well for the lying in expenses as for the apprehension and conviction of such reputed father, and also for the support of such child up to the time of making such order, and also such weekly sum as shall thereafter be paid by such reputed father for the future support of such child while chargeable on any Parish.

VI. And be it enacted, That on notice of any such order such reputed father shall thereupon forthwith pay into the hands of the Clerk of the Peace for the use of the Overseers of the Poor of the Parish where such child is chargeable, such sums as shall be so ordered for expenses so

already incurred as aforesaid, and shall also enter into recognizance conditioned that such person, his executors and administrators, shall pay to the Overseers of the Poor of the Parish such weekly sum as shall be so ordered for the future support of such child.

VII. And be it enacted, That if any such to reputed father shall refuse or neglect to perform such order, or to give such recognizance, such Court may thereupon forthwith commit such reputed father to the common gaol of the County, there to remain until he enter into such recognizance or be otherwise discharged by law: Provided always, that when such reputed father is wholly unable to perform such order or to find such sureties, the said Court may in their discretion at any time order such father to be discharged.

VIII. And be it enacted, That any recognizances required by this Act shall be jointly and severally acknowledged by the said reputed father and one or more sufficient sureties to the satisfaction of such Court, or in case the said reputed father be under the age of twenty one years, then by two sufficient sureties as aforesaid and payable to Her Majesty, Her Heirs and Successors, in a penal sum not exceeding fifty pounds, in the form given by the Schedule to this Act annexed, or in words to the like effect.

IX. And be it enacted, That when any such recognizance or any recognizance taken by virtue of the said recited Act, whether taken before such Court or a single Justice of the Peace, may become forfeited by reason of the non-performance of the condition thereof, proceedings may be had at the instance of the Overseers of the Poor of the Parish interested, in the said Court of Sessions in the nature of *Scire Facias*, (issuable either in term or vacation,) for the recovery of the penalty of the said recognizance; and upon the return of such *Scire Facias* duly served at least fourteen days before the return thereof, the said Court may proceed in a summary manner to hear and determine the question whether the party appear or make default, and in case the said Court thereupon adjudge the said recognizance forfeited by reason of the non-performance of the condition thereof, may award execution directed to the Sheriff of such County, agreeably to the form hereinafter provided for, and the amount thereof when paid or levied shall be paid into the hands of the Clerk of said Court for the purpose of being applied under the direction of the said Court to the support of the Poor of the Parish interested: Provided always, that such Court may from time to time in their discretion make such order and give such relief, either for the stay of proceedings or the whole or partial discharge of such recognizance, and on such terms and conditions as such Court may think reasonable and proper.

X. And be it enacted, That it shall be the duty of the Sheriff to whom any such *Scire Facias* or execution may be directed to serve and execute the same within his bailiwick in the same manner as other writs of *Scire Facias* or execution are served, and to make due return thereof, for which he shall be entitled to the same fees as in other like cases, to be allowed and paid by the said Court as a part of the contingent expenses of the County, unless in the case of an execution levied by or paid to him, in which case such Sheriff may levy or receive his fees for service of such execution and poundage thereon from the party against whom such execution may be issued.

XI. And be it enacted, That a certified copy signed by the Clerk and under the seal of the said Court, of any such proceedings, shall be received in all Courts of Law or Equity in this Province as evidence thereof in the same manner as if the original were produced.

XII. And be it enacted, That the said *Scire Facias*, Judgment and Execution in such proceedings, may be in the form given by the Schedule to this Act annexed, or in words to the like effect.

XIII. And be it enacted, That in any Parish within this Province, wherein Commissioners of Alms or Poor Houses are established, such Commissioners shall, in all respects, be deemed and considered the Overseers of the Poor of such Parishes for all the purposes of the said recited Act or this Act

#### SCHEDULE.

*Form of Recognizance taken before a single Justice, for appearance at Sessions, &c.*

\_\_\_\_\_ ss. \_\_\_\_\_ Be it remembered that on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the Reign of our Sovereign Lady Victoria, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, A. B. of \_\_\_\_\_ in said County \_\_\_\_\_ and C. D. of \_\_\_\_\_ in said County \_\_\_\_\_, personally came and appeared before me \_\_\_\_\_ Esquire, one of Her Majesty's Justices of the Peace, in and for the said County, and acknowledged themselves to be jointly and severally indebted to our said Sovereign Lady the Queen, in the sum of \_\_\_\_\_ pounds, of lawful money of New Brunswick, upon condition, that if the said A. B. [or in case the person charged he under age, that E. F.,] shall personally appear at the next General Sessions of the Peace to be holden at \_\_\_\_\_, in and for the said County, then and there to answer to a charge made against him as being the reputed father of a Bastard Child, likely to be chargeable to some Parish in said County, and not to depart without leave of the said Court.

Taken and acknowledged before me, the same day and year aforesaid.

A. L. J. P.

*Form of Recognizance taken in open Court to appear or to perform Order, &c.*

\_\_\_\_\_ ss. \_\_\_\_\_ Be it remembered, that at the General Sessions of the Peace, held at \_\_\_\_\_, in and for the County aforesaid, on the \_\_\_\_\_ Tuesday \_\_\_\_\_ in the \_\_\_\_\_ year of the Reign of our Sovereign Lady Victoria, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, before [naming the senior Justice actually presiding at the time of taking such recognizance], and others, Justices of our said Lady the Queen, assigned to keep the Peace of our said Lady the Queen, in and for said County, and also to hear and determine divers felonies, trespasses and other misdemeanors committed in the said County, personally appeared A. B. of \_\_\_\_\_, in said County \_\_\_\_\_ and C. D. of \_\_\_\_\_, in said County \_\_\_\_\_, and acknowledged themselves jointly and severally indebted to our said Sovereign Lady the Queen, Her Heirs and Successors, in the sum of \_\_\_\_\_ pounds of lawful money of New Brunswick, upon condition that if the said A. B. [or in case such reputed father be under age,

that if E. F.] shall personally appear at the next General Sessions of the Peace to be holden at \_\_\_\_\_ in and for said County, then and there to answer to a charge against him as being the reputed father of a Bastard Child, likely to be chargeable to some Parish within the said County, and not to depart without leave of the said Court, then this recognizance to be void, otherwise in full force.

Taken and acknowledged in open Court,  
L. M. Clerk Peace.

[Or in case the condition of such recognizance be to perform any order of maintenance made or to be made by such Court for the support of any such child:] upon condition that if said A. B. [or in case such father be under age, that if E. F.] shall well and truly at all times obey and perform all or any orders of such Court, made or to be made, touching the support or maintenance of a Bastard Child, while chargeable on any Parish in said County, and of which child the said \_\_\_\_\_ has been by such Court adjudged the reputed father, then this recognizance to be void, otherwise in full force.

Taken and acknowledged in open Court,  
L. M. Cleric Peace.

*Form of Scire Facias.*

\_\_\_\_\_ ss. \_\_\_\_\_ Victoria by the Grace of God, &c.  
To the Sheriff of the County of \_\_\_\_\_ Greeting:

Whereas A. B. and C. D., lately in and before trap Court of General Sessions of the Peace held at \_\_\_\_\_, in and for said County, on the \_\_\_\_\_ Tuesday \_\_\_\_\_, in the year \_\_\_\_\_, acknowledged themselves indebted to our Sovereign Lady Queen Victoria, in the sum of \_\_\_\_\_ of lawful money of New Brunswick, upon condition that A. B. should personally appear at the next General Sessions of the Peace, to be held in and for said County, to answer a certain charge made against the said A. B. as being the reputed father of a Bastard Child, as by said recognizance will appear, [or in case such recognizance be for the performance of any order of said Court for maintenance of such Child, say upon condition, here recite condition according to the fact.] And whereas the said Court is given to understand that the said A. B. hath failed to perform the condition of the said recognizance whereby the same hath become forfeited; These are therefore to command you that you make known to the said \_\_\_\_\_ that they appear before the next Court of General Session of the Peace to be holden at \_\_\_\_\_, in and for said County, on the \_\_\_\_\_ Tuesday in \_\_\_\_\_ next, to show cause, if any they have or know, why execution should not issue against them according to the effect of such recognizance. Witness [Senior Justice] at \_\_\_\_\_ the [last day of precious Session] in the \_\_\_\_\_ year of our reign.

A. B. Clerk.

[Or in case such recognizance shall have been taken before a single Justice for appearance at such Court, the *Scire Facias* to be in like form as near as may be, reciting as follows:] Whereas A. B. lately before A. C. one of Her Majesty's Justices of the Peace, in and for the said County, personally appeared and acknowledged himself indebted, upon condition [as before, &c.]

*Form of Minute and Entry of Judgment.*

At a Court of General Sessions of the Peace, held at \_\_\_\_\_, in and for the County of \_\_\_\_\_, on the \_\_\_\_\_ Tuesday of \_\_\_\_\_, 18\_\_\_\_, before \_\_\_\_\_ and other Justices of said Court.

It appearing to this Court that A. B. hath not performed the condition of a certain recognizance lately entered into by him relating to a charge of Bastardy, and the said A. B. having been duly served with a *Scire Facias* thereon returnable at this present Term, and not appearing thereto, [or if appearing not shewing sufficient cause]; It is considered and adjudged by the Court that such recognizance is forfeited, and that Execution do issue against the said A. B. according to the form and effect of such recognizance.

*Form of Execution.*

General Sessions, \_\_\_\_\_ ss. \_\_\_\_\_ Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c.

To the Sheriff of \_\_\_\_\_ Greeting:  
Whereas at a Court of General Sessions of the Peace held at \_\_\_\_\_, in and for the said County, on the \_\_\_\_\_ Tuesday in \_\_\_\_\_, It was adjudged that a certain recognizance entered into by \_\_\_\_\_, in the penal sum of \_\_\_\_\_, with a condition relating to a case of Bastardy, had become forfeited by reason of the condition thereof not being performed, of which execution remains to be done; We therefore command you that of the good and chattels of the said \_\_\_\_\_ in your Bailiwick you cause to be made the said sum of \_\_\_\_\_ and have that money before us at the next Court of General Sessions of the Peace to be held at \_\_\_\_\_, on \_\_\_\_\_, to be paid and applied according to law, and for want of goods and chattels whereon to levy you will take the body of the said \_\_\_\_\_ and him safely keep in the common gaol of your County until he pay the said sum of \_\_\_\_\_ or be otherwise discharged, and make return hereof. Witness \_\_\_\_\_, at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of our reign.

A. L. Clerk.