

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1849. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1849.

12 Victoria – Chapter 40

**An Act to consolidate and amend the several Acts of Assembly relating to Summary Actions.
Passed 14 April 1849.**

Whereas it is considered expedient that the several Acts of Assembly relating to Summary Actions, both in the Supreme and Inferior Courts of Common Pleas, should be arranged and consolidated into one Act;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the several Acts and parts of Acts hereinafter mentioned shall be and the same are hereby repealed, (save as hereinafter otherwise is provided,) that is to say: the fifth, sixth, seventh and eighth Sections of an Act made and passed in the thirty fifth year of the Reign of His Majesty King George the Third, intituled *An act to regulate the Terms of the Sittings of the Inferior Courts of Common Pleas in this Province, and to enlarge the jurisdiction of the same, and for the summary trials of certain actions*; also an Act made and passed in the forty second year of the same Reign, intituled *An Act in addition to an Act to regulate the the Terms of the Sittings of the Inferior Courts of Common Pleas in this Province, and to enlarge the jurisdiction of the same, and for the summary trial of actions*; also an act made and passed in the fourth year of the Reign of His late Majesty William the Fourth, intituled *An Act to establish and regulate a Summary Practice in the Supreme Court*; also an Act made and passed in the fifth year of the same Reign, intituled *An Act to amend the Law relating to a Summary Practice in the Supreme Court*; also an Act made and passed in the sixth year of the same Reign, intituled *An Act to amend the Law relating to the Summary Practice in the Inferior Courts of Common Pleas*; also the second and subsequent Sections of an Act made and passed in the sixth year of the Reign of Her present Majesty, intituled *An Act to amend the Law relating to the practice in the Inferior Court of Common Pleas, and render the same uniform in the several Counties*: Provided always, that nothing in this Act contained shall extend to repeal any of the said recited Acts, so far as they or any of them repeal any former Acts; provided also, that any rules of Court or regulations heretofore made, under and by virtue of any authority given in and by the said recited Acts, shall be and still continue valid and applicable to the provisions of this Act, so far as consistent with the same, until such rules and regulations may be altered; and provided also, that all actions commenced before the passing of this Act may still be proceeded with to their final termination, in the same manner as if this Act had not been made and passed.

II. And be it enacted, That the several Courts of Record in this Province are hereby empowered in all actions of debt, covenant, assumpsit, trover, and conversion and trespass to personal property, instituted in any of the said Courts, the sum total whereof shall not exceed twenty pounds, to proceed in a summary way, by the examination of witnesses in open Court, or other legal evidence, to try the merits of such causes wherein no dilatory plea shall be admitted, and to determine thereon according to law or equity, and enter up judgment accordingly, unless such cause shall be put to issue by a Jury, in which case such causes shall be tried according to the rules

and practice of said Courts respectively, as in other cases, and that the finding of the Jury in such cases shall be final.

III. And be it enacted, That in the said causes the bill of complaint or declaration shall be inserted in the writ, a copy of which, with a copy of the particulars of the plaintiff's demand, in cases where the defendant is entitled to the same, shall be served on the defendant, who shall, at the term to which the writ is returnable, or within thirty days after, put in bail or enter his appearance in the said action, and if he intend to defend the same, file the general issue, and give a copy thereof to the plaintiff or his attorney; and the said cause shall be tried and determined by the Jury according to the rules and practice of the Court made or to be made for such purpose; and in case the defendant shall fail to enter his appearance and plead within the time aforesaid, that then judgment may be entered by default in the said cause without any rule to plead; or if the cause be bailable, and the defendant should fail to enter special bail within the said term of thirty days, then the plaintiff may proceed against the Sheriff or on the bail bond, as in ordinary cases; provided always, that the Court, or a Judge thereof, may let in the defendant to appear and defend, or give relief to the Sheriff or bail, in like manner and upon such terms as in actions not summary by the practice of the said Court may be done, after interlocutory judgment or proceedings had against the Sheriff or on the bail bond.

IV. And be it enacted, That in such summary actions the defendant may file a demurrer to the writ, in lieu of the general issue, and give a copy thereof to the plaintiff or his attorney, which demurrer shall be in a brief and summary form, and notice in writing of the ground thereof shall be given to the plaintiff or his attorney at the same time with such copy; and upon such demurrer, the Court shall give judgment according as the very right of the case shall require, without regarding any imperfection, defect, or want of form in the writ; and if judgment be given for the plaintiff, the Court may proceed to assess the amount to be recovered, in like manner as in the case of judgment by default, and no arrest of judgment shall be allowed in such summary actions.

V. And be it enacted, That no defendant shall be held to bail in any such summary action unless the plaintiff's cause of action shall amount to upwards of five pounds, and affidavit thereof be made and filed as heretofore accustomed.

VI. And be it enacted, That in such summary actions any matters in bar to the action which in actions not summary ought to be pleaded specially, may be given in evidence under the general issue, provided that notice in writing of such matters be given to the plaintiff or his attorney at the same time with the plea; and infancy or coverture of the defendant shall not in any summary action be given in evidence unless notice thereof be given.

VII. And be it enacted, That after the expiration of twenty days after the day on which any such judgment by default shall be entered, the damages or the amount to be recovered, may be assessed by a Judge of the Court in term or vacation; and upon the production of such assessment, signed by such Judge, it shall be lawful for the Clerk of such Court to tax the costs and sign judgment, whereupon execution may issue forthwith; provided that the defendant 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 or assessment, shall have power to order the same to be made by a Jury, in like manner as is now the law and practice in cases before the Court in Term; and provided also, that a true copy of the taxed bill of costs shall be filed with the judgment papers in all summary actions, for which a fee; of one shilling shall be allowed and no more; and no execution shall issue on any judgment hereafter to be entered, unless such bill of costs shall be so filed.

VIII. And be it enacted, That every judgment to be entered by virtue of this Act, may be entered as the judgment of the Court, although the Court may not be sitting on the day of entry and signing thereof; and every execution issued by virtue of this Act on any judgment taken in vacation, shall and may bear teste on the day of the issuing thereof, (if issued before the next term after judgment was so signed,) and such judgment and execution shall be as valid and effectual as if the same had been entered of record, signed and issued in the ordinary course.

IX. And be it enacted, That the Clerk of the said Court shall keep a Book in which shall be entered a memorandum of every final judgment so given, whether by default, or tried or determined in a summary way, under the provisions of this Act, a copy of which said judgment, certified by the Clerk, under the Seal of the Court, shall be evidence of such judgment in all Courts in this Province.

X. And be it enacted, That no Attorney at Law shall have any privilege in any such summary actions, but may be proceeded against in all respects the same as any other person, and may in like manner be held to bail.

XI. And be it enacted, That the venue in all summary actions within the meaning of this Act, instituted in the Supreme Court, shall be set forth in the margin of the writ, subject to be changed by rule or order of such Court according to the ordinary practice thereof; and if any cause in which the venue shall be laid or changed in or to any other County than the County of York, shall be defended and put to a Jury as aforesaid, the same shall be tried at Nisi Prius in the County in or to which the venue is laid or changed, in such manner and form as the said Supreme Court by general rule or order shall prescribe and direct.

XII. And be it enacted, That no judgment in summary actions shall affect or bind lauds; nevertheless, in summary actions brought in the Supreme Court, lands may be taken in execution, and sold under the like regulations as in other cases.

XIII. And be it enacted, That no defendant shall remove any such action into the Supreme Court by habeas corpus or certiorari.

XIV. And be it enacted, That the Supreme Court may establish such general rules and regulations in regard to summary actions, to be observed as well in the Supreme Court as in the several Inferior Courts, not repugnant to this Act, as they from time to time consider necessary; provided that the ordinary practice of the said Courts respectively shall regulate the proceedings in such actions in matters not herein or by some general rule or regulation of the Supreme Court specially provided for.

XV. And be it enacted, That no Attorney shall commence any action in any Court in this Province, either by himself or his agent, unless first having been authorized in writing by the plaintiff or his agent.

XVI. And be it enacted, That throughout this Act, in the construction thereof, (except there be something in the subject or context inconsistent with or repugnant to such construction,) the words or expression "Courts of Record," shall extend to and mean the Supreme Court, any Inferior Court of Common Pleas, and the Mayor's Court in and for the City and County of Saint John.

XVII. And be it enacted, That the Fees attending the prosecution and defence of summary actions shall be as follows :—

For the Judges of the Court.

On entry of the Cause, £	0	2	0
On final Judgement after judgment by default or confession, (including assessment of damages, if any)	0	2	6

For the Clerk.

Signing, sealing, and filing every Writ,	0	1	6
Filing every Paper not otherwise provided for,	0	0	6
On entry of Cause, including filing Writ and Return,	0	1	0
On interlocutory Judgment and for Certificate of same, if required	0	1	0
Entry of final Judgement, whether after default, confession, demurrer or trial,	0	2	0
Taxing Costs,	0	1	0

For the Attorney.

Writ, Declaration, (including particulars, if any,)	0	11	0
Each copy,	0	2	6
If bailable, for Affidavit and Oath,	0	2	0
(No copy of Writ to be served on or tax for bail.)			
Alias or Pluries Writ, &c.	0	3	0
Each copy,	0	2	0
Entry Docket on filing the Writ, and entry of Cause after service,	0	2	6
Interlocutory Judgment,	0	2	6
Copy of Bill of Costs, to file,	0	1	0
All other proceedings after interlocutory to final Judgment,	0	5	0
Every Execution,.. ...	0	2	9

[No Execution to be taxed or allowed in Bills of Costs, but to be
endorsed on Execution and levied for with debt and costs,
being 5s. Made up thus --

Attorney,	£ 0	2	9
Clerk, signing, sealing, and filing,	0	1	6
Sheriff on return,	0	0	9
		0	5 0]

And when the suit is defended, all further proceedings by the plaintiff after appearance, and also the costs of defence by the defendant, shall be for the Justices, Clerk and Attornies respectively, the same as are now allowed and taxable by law in actions not summary in the Inferior Court of Common Pleas for like services; provided that no fee shall, be allowed for making up a record or for a venire, or any other service not actually performed.

For the Counsel.

On every cause entered for trial, and for every argument before the Court in term, a fee of not less than eleven shillings and eight pence, nor more than two guineas, as the presiding Judge may. determine; provided that no Counsel fee shall be taxed for any argument,, except in such cases as the Supreme Court can by law tax for similar services.

For the Sheriff, Constable, Crier, or Witness.

The same as in actions not summary in the Court where the action is brought.

XVIII. And be it enacted, That if the plaintiff proceed according to the ordinary practice of the Court, in any case in which by the provisions of this Act the proceedings ought to be summary, or when the true debt or damages to be recovered shall not exceed twenty pounds, although the actual amount of judgment entered maybe for a penalty, or on confession, fora larger sum than twenty pounds,! with a condition or agreement for the payment of a lower sum, hot exceeding twenty pounds, he shall not be entitled in any such case to more costs than if he had proceeded in a summary manner, unless he obtain the order of the Court, or of a Judge of the Court in which the judgment is obtained, for the larger costs, upon good cause shewn therefor.

XIX. And be it enacted, That no fees for the execution or service of writs in summary actions, shall in any case be taxable or allowed in the costs, unless such writ shall have been served by the Sheriff or his Deputy, or in cases where the Sheriff is a party, by the Coroner.

Example of Bill of Costs to be taxed under this Act, on a judgment by default.

A. B. vs. C. D.

Writ,... .. £ 0	11	8
Copy of Writ, 0	2	6
Clerk, signing and sealing,... .. 0	1	6
Judge on entry and return of Writ after service, 0	2	0
Clerk on entry of cause and filing Writ and Return after service, ... 0	1	0
Attorney on entry as aforesaid, 0	2	6
Attorney on Interlocutory Judgment, 0	2	6
Clerk on Certificate of same, 0	1	0
Attorney for copy of Bill of Costs filed, 0	1	0
Judge on assessment of Damages and final Judgment, 0	2	6
Clerk on taxing Costs, 0	1	0
Clerk on final Judgment, 0	2	0
Attorney on proceeding to final judgment, 0	5	0
£ 1	16	2

Sherriŕ's fees to be added; also, if a bailable cause, 2s. for affidavit and oath.