

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1850.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1850.

13 Victoria – Chapter 8 New Brunswick Local Acts

**An Act to alter and amend the Practice and Proceedings in the City Court of Saint John. Passed 11th April 1850.**

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That the City Court of Saint John shall be holden on Thursday in every week, provided that when Christmas Day or New Year's Day shall fall upon Thursday in any week, the said Court shall be holden on the Wednesday in such week, and not on Thursday; provided also, that the sitting of the said Court may be adjourned to the day next succeeding any Court day, if deemed expedient or necessary for the dispatch of any unfinished business.

II. And be it enacted, That the ordinary process in all suits in the said Court shall be a Summons issued by the Common Clerk of the said City, and may be according to the mode and form heretofore used and accustomed in the said Court, which Summons shall be served by a Marshal, and may be served at any time before the time of appearance mentioned therein, in the manner following, that is to say, If the defendant shall be found, it shall be served by delivery to him of a copy thereof, and by reading the same to him, or acquainting him with the contents, if required by him; if the defendant shall not be found, it shall be served by leaving a copy thereof at his last place of abode, in the presence of some person residing in the house of suitable age and discretion, who shall be informed of its contents, if he shall so require; and every Marshal serving a Summons shall return thereupon in writing the time and manner in which he executed the same, and if required by the Clerk or either of the parties, shall verify such return by oath before the Clerk or his Deputy.

III. And be it enacted, That the Clerk shall upon application issue an Attachment, when it is made to appear on oath, taken before him or his Deputy, or on affidavit to be taken in writing before an Alderman by the Plaintiff or his agent, that the defendant is justly indebted to the plaintiff in a sum to be specified, which shall not be less than five shillings, and that he doth verily believe that the defendant is about to depart from the said City; provided that no Attachment shall be issued against any person having privilege of the General Assembly or against any female.

IV. And be it enacted, That every such Attachment may be according to the mode and form of Attachment heretofore used and accustomed in the said Court, and the same shall be served by a Marshal, by arresting the defendant, and at the same time delivering to him a copy of such Attachment, and also if he shall require it, reading the same to him or acquainting him with its contents.

V. And be it enacted, That the Marshal shall upon such arrest, take bail for the appearance of the defendant, if good and sufficient bail be tendered, which bail shall thereupon subscribe a memorandum to be endorsed on the Attachment, or subjoined at the foot thereof, to the effect that he or they become bail; but if such bail be not tendered, the Marshal shall carry and convey

the defendant to the common gaol of the City and County of Saint John, and deliver him to the keeper of such gaol, together with the said Attachment, there to remain till discharged by due course of law, or until the debt and costs be paid; but such defendant shall not be liable to be detained in custody for any longer period than one day for every two shillings of the sum stated in the Attachment; and if charged in Execution while so in custody on the Attachment, the time during which the defendant shall have been confined under the Attachment shall go in discharge of an equal portion of the imprisonment to which he would be liable under the Execution; provided always, that no gaoler shall be liable to an action for detaining any defendant so committed beyond the legal period, unless he shall have demanded his discharge, or unless such detention shall appear to have been wilful and malicious.

VI. And be it enacted, That a defendant so committed to gaol shall any time before final judgment be entitled to his release in either of the following cases: Firstly, If any one or more responsible person or persons resident within the said City and County be willing to become bail, and shall subscribe a memorandum to that effect, to be endorsed on the Attachment or subjoined thereto, and shall, unless allowed by the plaintiff, justify by affidavit before the Clerk or an Alderman, which affidavit shall state the place of residence and the occupation of the person so offering himself as bail, that he is really and bona fide worth double the sum for which the defendant may have been held to bail, over and above what would pay all his just debts, and in addition to the necessary wearing apparel and bedding of himself and family, fuel, and tools of trade: Secondly, If the defendant shall make a deposit with the Clerk to the amount of the debt sworn to, together with ten shillings for costs, as security for the defendant's satisfying the plaintiff for the amount which he may recover in the suit: and upon such bail being put in and justified, or allowed as aforesaid, or such deposit being made, the Clerk shall grant an order for the release of the defendant, directed to the gaoler, who shall, upon the delivery of such order to him, discharge the defendant from custody.

VII. And be it enacted, That the bail for any defendant shall be answerable for the defendant's paying the amount of debt and costs which the plaintiff may recover against him, or that his body be rendered into custody upon execution, if such execution be taken out and delivered to a Marshal for the purpose of being executed within forty days after judgment, or within forty eight hours after service of a written notice by the bail to the plaintiff or his agent, requiring such execution to issue; and if such execution be not taken out and delivered to a Marshal within the said period of forty days after judgment, or within forty eight hours after such notice as aforesaid, in either of such cases the bail shall be discharged from all further liability; provided also, that the bail may require the plaintiff to take out execution forthwith after judgment, and may take and detain the defendant until such execution is prepared and delivered to a Marshal, and thereupon commit him to the custody of such Marshal upon such execution; and if the plaintiff shall upon such requisition refuse to take out execution, the bail shall be discharged; and any defendant before judgment, or any debtor having the benefit of the gaol limits, in any cause in the said Court, may render himself, or be rendered by his bail, in discharge of his bail, by an order for that purpose to be obtained from the Clerk, upon oath or affidavit of the circumstances, which order shall be lodged with the gaoler at the time of delivering the principal into custody, and the bail shall thereupon be discharged from all further liability.

VIII. And be it enacted, That every Marshal serving an Attachment shall return thereupon in writing the manner in which he executed the same.

IX. And be it enacted, That if any Summons or Attachment be returned not served, it may from time to time be renewed by the Clerk, who shall upon the application of the plaintiff issue an alias or pluries Summons or Attachment, provided that no more than one pluries writ shall be issued or allowed for in the taxation of costs.

X. And be it enacted, That any plaintiff or defendant in a suit before the said Court, may appear and conduct his suit, either in person, or by attorney or agent, whose authority may be either written or oral; but on the trial, such attorney or agent shall not be a competent witness for the party for whom he appears.

XI. And be it enacted, That every person applying for a Summons or Attachment shall at or before the issuing of the same, deliver at the office of the Clerk as many copies of a statement of the particulars of his demand, or cause of action, as there are defendants, with an additional copy to file; and the Clerk shall annex one copy thereof to each copy of the process, to be served on the defendant with the process; and every defendant having a set-off, shall file with the Clerk, or deliver to the plaintiff, a particular of such set-off, at least one day before the day appointed for hearing the cause.

XII. And be it enacted, That the Clerk shall at all reasonable times exhibit such particulars to the opposite party, and if required, deliver a copy of the same.

XIII. And be it enacted, That the parties shall at the trial of the cause be confined to their respective particulars, and shall not be allowed to go into evidence of any matter or demand not contained therein.

XIV. And be it enacted, That where the Summons has been served by leaving the same at the dwelling house, and it shall be made to appear to the Court on oath, or affidavit, that such defendant was absent from his dwelling house, and has not since returned thereto, or had notice of such Summons, the Court may at their discretion adjourn the hearing of the cause.

XV. And be it enacted, That a Subpoena issued by the Clerk for the attendance of witnesses to give evidence on any trial pending in the said Court, shall be valid to compel the attendance of a witness living in the City and County of Saint John, or in an adjoining County; and that the service of the Subpoena shall be effected in the mode, and the person subpoenaed shall be subject to the liability, prescribed and provided in those respects in and by the Act to regulate proceedings before Justices of the Peace in Civil Suits.

XVI. And be it enacted, That every cause shall be heard and determined before the said Court, at the return of the process, if the defendant shall have been duly served at least two clear days before the return day, otherwise the cause shall be heard and determined at the Court day next

after the return of the process, if duly served, unless the same shall be adjourned on account of the absence of some material witness; provided always, that in cases where the defendant shall be arrested under any Attachment, and be in actual custody thereunder, the hearing and determination of such cause shall, if the defendant desires it, be had in all cases at the return of such process, unless postponed by the order of the Court, on good cause shewn on affidavit.

XVII. And be it enacted, That upon the hearing of any cause, the Court (unless a Jury shall have been duly demanded) shall proceed to hear the proofs and allegations of the parties, and to determine as the very right of the case may appear.

XVIII. And be it enacted, That if the defendant do not appear to make defence, and it shall appear that the process has been duly served two clear days before the return thereof, the Court shall proceed to assess the debt, or damages, as to them shall appear just, and may make such assessment upon any Bond, Bill, Note, or other written security for the payment of any sum certain, without further evidence; and such security shall be marked by the Alderman or the Clerk, and remain on file in the Clerk's office; the Court may also assess the debt or damages on the viva voce examination or the affidavit of the plaintiff, or any other person, which affidavit may be made before any Alderman, or the Clerk, or any Justice of the Peace, or any person authorized to take affidavits to be read in the Supreme Court.

XIX. And be it enacted, That on the application either of the plaintiff or defendant, before or at the time of calling on any cause for trial, the presiding Alderman and Common Clerk shall viva voce summon from among the bystanders, three disinterested persons duly qualified to sit as Jurors in Courts of Record, who shall be in no wise akin to either party, to make a Jury for the trial of the action, who being duly sworn, shall try the cause and give their verdict, and judgment shall be entered thereon; and the same regulations in regard to the Jury and the trial of the cause shall be kept and observed in all respects as are provided in that behalf in and by 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*, except as the same may be altered or other provisions made therefor by this Act; provided always, that if in the discretion of the said presiding Alderman and of the Common Clerk, three fit persons shall not be in attendance to make such Jury, the said presiding Alderman and Common Clerk may postpone the trial of such cause to the next sitting of such Court, and if need be and they shall think it expedient, may authorize the Clerk to issue a Venire to any Marshal disinterested between the parties, and not being the Marshal who shall have served the first process in such cause, commanding him to summon three disinterested persons duly qualified to sit as Jurors in Courts of Record, and who shall be in no wise akin to either party, to make a Jury on the trial of such action, who being duly sworn, shall try the cause as aforesaid.

XX. And be it enacted, That upon any judgment being rendered by the said Court, the successful party may have Execution against the body or the goods of the adverse party, at his election, and on application therefor, the Clerk shall issue Execution, but no Execution shall be issued by the Clerk after the expiration of one year from the time of rendering judgment.

XXI. And be it enacted, That the Execution shall be dated on the day when it is actually issued, and shall be returnable at the second succeeding Court day, unless a longer time shall be requested by the party in whose behalf the same is issued, when the return day may be extended to any time not exceeding four weeks from the date, and every such Execution may be according to the form heretofore used and accustomed in the said Court; and if any Execution be returned unsatisfied in whole or in part, a further Execution for the amount remaining due thereon may be issued.

XXII. And be it enacted, That the Marshal to whom an Execution against the goods shall be delivered, shall proceed forthwith to levy the same, and unless the debt or damages and costs be paid, he shall take sufficient goods and chattels of the party against whom the same is issued to satisfy the same, and shall proceed thereon in all respects as is provided for like cases in and by the said Act of Assembly for regulating the proceedings before Justices of the Peace in Civil Suits.

XXIII. And be it enacted, That the Marshal to whom any execution against the body shall be delivered to be executed, shall in the cases authorized by law take the body of the person against whom the Execution is directed, and convey him to the common gaol of the said City and County, the keeper whereof shall keep such person in safe custody until the debt or damages and costs shall be paid, or he is thence discharged by due course of law; and the Marshal so conveying any such person shall deliver to the keeper of such gaol the Execution by virtue of which the commitment is made; provided that no person so committed shall be liable to be detained more than one day for every two shillings of the debt or damages and costs required by such Execution to be levied, or more than fifty days in the whole, if the amount exceed five pounds, and every person so committed shall be entitled to his discharge at the expiration of such time; provided also, that notwithstanding such discharge of the defendant, the judgment upon which such Execution issued shall remain good against the property of the defendant, and a new Execution may be issued against his property in like manner as if he had not been imprisoned.

XXIV. And be it enacted, That the jurisdiction and authority of the said City Court, and the practice, forms and modes of proceeding therein, (save and except as the same are herein altered, regulated and provided,) shall be and remain the same as heretofore established, used and allowed, and in addition thereto that the jurisdiction and authority of the said Court shall extend to actions against bail on any limit bond in a suit in the said Court, notwithstanding the penalty of the said bond may exceed five pounds.

XXV. And be it enacted, That whenever in any of the foregoing provisions, words importing the singular number or the masculine gender are used, yet the said provisions shall be understood to include several matters as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

XXVI. And be it enacted, That the Fees in Actions in the said City Court for the Alderman, Common Clerk and Marshals, shall be taxed and allowed according to the following Table, and not otherwise, that is to say:—

TABLE OF FEES.

*To the Alderman.*

Every Judgment, two shillings and six pence; every Oath out of Court, one shilling; every Order out of Court, one shilling and six pence.

*To the Common Clerk.*

Summons, eight pence; each copy, four pence; Attachment, eight pence; each copy, four pence; each Oath, six pence, not more than two to be taxed for Witnesses on a trial; Subpoena and Ticket, eight pence; each additional Ticket, four pence; Venire, eight pence; Execution, eight pence; each Certificate, one shilling; each Adjournment, one shilling; copies of Papers per folio of one hundred words, six pence; Return to an Order of Review, five shillings.

*To the Marshal.*

Executing a Summons, one shilling; an Attachment, one shilling and six pence; an Execution, two shillings and six pence; attending Court on trial or hearing, six pence.

*Witnesses and Jurors.*

The same Fees as are now allowed in civil actions before a Justice of the Peace; but no Witnesses' fees to be taxed for any party, unless it shall appear on oath that he has actually paid the same to such Witness.

XXVII. And be it enacted, That this Act shall commence and take effect on the first day of June in the present year.